

**REQUEST FOR PROPOSALS**  
**NEW YORK STATE DEPARTMENT OF TRANSPORTATION** (on behalf of the)  
**NEW YORK METROPOLITAN TRANSPORTATION COUNCIL**  
**RFP #PSA5: ‘CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC’**  
**RFP Release Date: December 6, 2021**

**RFP Modification #2**

**A. RFP Schedule**

NYMTC and NYSDOT will attempt to adhere to the following schedule to progress this solicitation:

<u>NYS Contract Reporter Announcement:</u>	<u>Wednesday, December 1, 2021</u>
<u>RFP Release Date:</u>	<u>Monday, December 6, 2021</u>
<u>Pre-Proposal Webinar:</u>	<u>Wednesday, December 15, 2021 at 2 PM</u> <u>Eastern Standard Time (EST)</u>
<u>Question Submittal Due:</u>	<u>Wednesday, December 29, 2021</u>
<u>Answers Due/RFP Mod #1 Due:</u>	<u>Tuesday, January 11, 2022</u>
<u>Second Round Questions Due</u>	<u>Tuesday, January 18, 2022</u>
<u>Second Round Answers Due/RFP Mod #2 Due:</u>	<u>Tuesday, January 25, 2022</u>
<u>Proposals Due:</u>	<u>Monday, February 14, 2022 at 2 PM (EST)</u>
<u>Proposal Evaluation:</u>	<u>Tuesday, February 15, 2022</u>
<u>Recommendation &amp; Designation:</u>	<u>Tuesday, March 15, 2022</u>
<u>Final Contract:</u>	<u>Early May-2022</u>
<u>Contract Award:</u>	<u>Late May-2022</u>
<u>Estimated Notice to Proceed:</u>	<u>July-2022</u>
<del>NYS Contract Reporter Announcement:</del>	<del>Wednesday, December 1, 2021</del>
<del><b><u>RFP Release Date:</u></b></del>	<del>Monday, December 6, 2021</del>
<del>Pre-Proposal Webinar:</del>	<del>Wednesday, December 15, 2021 at 2 PM</del> <del>Eastern Standard Time (EST)</del>
<del>Question Submittal Due:</del>	<del>Wednesday, December 29, 2021</del>
<del>Answers Due/RFP Mod #1 Due:</del>	<del>Friday, January 7, 2022</del>
<del><b><u>Proposals Due:</u></b></del>	<del>Thursday, January 27, 2022 at 2pm EST</del>
<del>Proposal Evaluation:</del>	<del>Friday, January 28, 2022</del>
<del>Recommendation &amp; Designation:</del>	<del>Friday, February 18, 2022</del>
<del>Final Contract:</del>	<del>Friday, April 1, 2022</del>
<del>Contract Award:</del>	<del>April 2022</del>
<del>Notice to Proceed:</del>	<del>June 2022</del>

- B. To assist potential Proposers in preparing Proposals in response to this solicitation, a pre-Proposal Webinar will be held on Wednesday, December 15, 2021 at 2:00 PM EST. A

general review of the solicitation will occur and specific questions regarding the solicitation may be answered. However, to assist us in preparing for the meeting, please try to submit any questions you may have, in writing, by close of business on December 13, 2021.

- C. Complete Proposals are to be submitted to the Designated Contacts stipulated in RFP section 5.1.

## D. RFP #PSA5 Response Form

### CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC

Please review RFP #PSA5. Please complete the following information and mail, e-mail, or fax to the NYMTC and NYSDOT addresses shown below, by the earliest practical date.

\_\_\_\_\_ WE DO INTEND TO SUBMIT A PROPOSAL

\_\_\_\_\_ WE DO NOT INTEND TO SUBMIT A PROPOSAL FOR THE

FOLLOWING REASONS:

\_\_\_\_\_

\_\_\_\_\_

Name and Address of Organization (Include Zip Code):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Types of Printed Name and Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

RFP Title: \_\_\_\_\_

Please email to the Designated Contacts listed in the RFP's section 1.5 'Designated Contacts'.

**RFP #PSA5**

**CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC**

**CONSULTANT TECHNICAL AND MANAGEMENT PROPOSAL CHECKLIST**

**Part I – Technical and Management Proposal (Table 1)**

<input type="checkbox"/>	Submit 1 (one) complete electronic copy of the Part I – Technical and Management Proposal, <b>for each Lot Proposal</b> , in both Adobe PDF and Microsoft Word format, using the procedure provided in RFP Section 5.5.
<input type="checkbox"/>	Title Page and Signed Cover Letter on official business letterhead
<input type="checkbox"/>	Completed Technical and Management Proposal checklist (Table 1)
<input type="checkbox"/>	Table of Contents identifying each major section and page numbers
<input type="checkbox"/>	Approach to Lot
<input type="checkbox"/>	Project Management
<input type="checkbox"/>	Complete and Submit Attachment #10: Firm Experience
<input type="checkbox"/>	Complete and Submit Attachment #12: Key Personnel Reference
<input type="checkbox"/>	Relevant Company and Product Literature

**RFP #PSA5**  
**CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC**

**CONSULTANT COST PROPOSAL SUBMISSION CHECKLIST**

**Part II – Cost Proposal (Table 2)**

<input type="checkbox"/>	Submit 1 (one) complete electronic copy of the Part II – Cost Proposal, <b>for each Lot Proposal</b> , <del>in Excel format</del> <u>in both Adobe PDF and Microsoft Word format</u> , using the procedure provided in RFP Section 5.5 ‘Proposal Submission’.
<input type="checkbox"/>	Completed Cost Proposal checklist (Table 2)
<input type="checkbox"/>	Required Cost Proposal – Attachment #13 Cost Proposal, <u>in both Adobe PDF and Microsoft Excel</u>

**RFP #PSA5**  
**CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC**

**CONSULTANT ADMINISTRATIVE PROPOSAL CHECKLIST**

**Part III –Administrative Proposal (Table 3)**

<input type="checkbox"/>	Submit 1 (one) complete electronic copy of the Part III –Administrative Proposal, <b>for each Lot Proposal</b> , in Adobe PDF <u>and Microsoft Word</u> format, using the procedure provided in RFP Section 5.5.
<input type="checkbox"/>	Completed Administrative Proposal checklist (Table 3)
<input type="checkbox"/>	Complete and submit online certification or electronic copy of Vendor Responsibility Questionnaire
<input type="checkbox"/>	Complete and submit Attachment #3: Form AOR Acknowledgement of Receipt
<input type="checkbox"/>	Complete and submit Attachment #4: Procurement Lobbying Law Compliance Forms
<input type="checkbox"/>	Complete and submit Attachment #5: Consultant Information and Certifications Form
<input type="checkbox"/>	Complete and submit Attachment #6: Non-Collusive Bidding Certification
<input type="checkbox"/>	Complete and submit Attachment #7: Vendor Assurance of No Conflict of Interest or Detrimental Effect

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# **RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC**

## **1 INTRODUCTION**

### ***1.1 RFP Purpose***

The New York Metropolitan Transportation Council (NYMTC), through contracts held by its host, the New York State Department of Transportation (NYSDOT), seeks to retain multiple responsive, responsible, and fully qualified Consultants under an FHWA-funded term agreement.

It is expressly understood that this Request for Proposals (RFP) does not commit NYSDOT to award a contract, pay any costs incurred in the preparation of Proposals to this request, or to procure or contract services or supplies. Further, NYSDOT shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to NYSDOT is approved and executed by the vendor and all necessary State officials. All management decisions regarding this RFP shall be made by NYSDOT management in consultation with NYMTC management.

### ***1.2 Background***

NYMTC is the officially designated Metropolitan Planning Organization (MPO) for the New York metropolitan area. Federal requirements mandate that NYMTC have and maintain a coordinated planning process that produces several planning products, which serve to frame the region's transportation planning decision making. NYMTC's planning process is also required to ensure the region's continued eligibility for Federal planning and capital funds. NYMTC's major planning products and analyses are:

- a. Regional Transportation Plan (RTP)
- b. Transportation Improvement Program (TIP)
- c. Annual Unified Planning Work Program (UPWP)
- d. Congestion Management Process (CMP)
- e. Transportation Conformity Determination
- f. Public Involvement Plan

The genesis of all other NYMTC activities, including advisory and ad hoc working groups, discretionary studies, monitoring, analysis, data gathering, and information dissemination efforts can be found with these mandated products.

### ***1.3 Definitions***

Compendium Lots – The description of requested services for which individual Contracts will be awarded to best value bid received for each individual Lot.

Consultant – An individual, business, vendor or other legal entity awarded a contract with a State agency to furnish commodities or services for an agreed-upon price.

Lots – subdivision of the contract into groupings of services. NYMTC and NYSDOT seek to establish planning services agreements for the acquisition of staff augmentation services for a



variety of technical planning services. These planning services are categorized in the “Lot” of services described in the RFP’s ‘Attachment 14: Compendium of Lots’.

Proposal – A bid, quotation, offer or response to a governmental entity’s solicitation relating to a procurement.

Proposer – The individual, business, firm, vendor or other legal entity that submits a Proposal in response to a Request for Proposals (RFP).

Telework – Work arrangement allowing the contractor to perform work at an approved alternative worksite instead of performing work at NYMTC’s offices. Telework shall be reimbursed using field office overhead rates.

#### ***1.4 Minimum RFP Responsiveness***

Any Proposer that does not provide all the material identified in RFP Sections 5.2, 5.3, 5.4 by the Proposal submission deadline will be determined to be non-responsive. Any Proposal deemed non-responsive by NYSDOT shall be removed from further consideration (prior to the technical evaluation of Proposals).

#### ***1.5 Designated Contacts***

Potential Proposers are advised that under New York State Finance Law section 139-j, communication on procurements can be made only to the Designated Contact persons. The designated contacts for this solicitation are:

NYMTC Contact:

[Seitu.Allen@dot.ny.gov](mailto:Seitu.Allen@dot.ny.gov)

New York Metropolitan Transportation Council  
(212) 318-1885

NYSDOT Contact:

[Patricia.Kappeller@dot.ny.gov](mailto:Patricia.Kappeller@dot.ny.gov)

New York State Department of Transportation  
(518) 457-2600

The above-named persons, as the Designated Contacts, shall be NYMTC’s and NYSDOT’s only points of contact and sources of information for this solicitation.

#### ***1.6 RFP Modifications***

NYMTC/NYSDOT will issue at least one modification to this RFP. NYMTC/NYSDOT reserve the right to modify conditions or requirements of this RFP with sufficient notice given to all potentially interested parties. All public information releases regarding this RFP shall be posted to NYMTC’s and NYSDOT’s respective websites:

<https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities>

<https://www.nymtc.org/UTILITY-MENU/Doing-Business/Current-RFPs>

Firms who express interest in this RFP shall receive an e-mail alerting them to each new RFP information release. Firms are advised to also regularly check for releases of new RFP

information. The final RFP Modification will be posted on NYMTC's and NYSDOT's web sites not later than ten business days prior to the Proposal due date – acknowledgement of receipt of any and all RFP modifications is a mandatory requirement. If any additional modification is required within that ten-day window, the Proposal due date shall be revised such that there will be at least seven days from the final Modification to the Proposal due date and all parties shall be notified.

## **2 CIVIL RIGHTS REQUIREMENTS**

### ***2.1 Disadvantaged Business Enterprise Participation Requirements***

Not Applicable

### ***2.2 Minority and Women-Owned Business Enterprise and Service-Disabled Veteran-Owned Business Enterprise Participation Requirements***

Not Applicable

### ***2.3 Diversity Practices***

Not Applicable

### ***2.4 Title VI Assurance***

The New York State Department of Transportation (NYSDOT), in accordance with Title VI of the Civil Rights Act of 1954, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation and Title 23, Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written solicitation, request for Proposal, or invitation for bid, that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for award.

### ***2.5 Equal Employment Opportunity***

In accordance with New York State Executive Order 162, issued on January 9, 2017, the Consultant shall provide workforce utilization reports in accordance with RFP Attachment 1, Draft Contract.

## 3 PROJECT AND CONTRACT OBJECTIVES

### 3.1 *Project Objectives*

Consultants are being sought to provide full, capable teams of personnel to complete all project scopes of services contained in an entire Lot. For this potentially multiple-award RFP, the following Lots are being advertised:

1. Lot 1: Programs and Grants Support – to provide one continuous, long term in-house contractor to augment NYMTC staff to provide programs and grants support.
2. Lot 2: Data Collection, Monitoring and Analysis – to provide periodic, on-call support services from a consultant team comprised of a flexible pool of staff resources with varying levels of expertise and experience for data collection, monitoring and analysis.
3. Lot 3: Geographic Information System (GIS) Support - to provide one continuous, long term in-house contractor to augment NYMTC staff to provide support for GIS services.
4. Lot 4: Public Involvement, Outreach and Engagement Support – to provide an on-call team with varying levels of expertise and experience to provide public involvement, outreach and engagement support on an as-needed basis.
5. Lot 5: Model Support, Updates and Enhancements - to provide two continuous, long-term in-house contractors to augment NYMTC staff for model support, updates and enhancements to NYMTC's models and post-processor software as well as an on-call team to provide ongoing technical assistance, procedures modifications and model extensions, testing and model user support.
6. Lot 6: Transportation Conformity Determination Support – to provide one continuous, long-term in-house contractor to support the required transportation conformity determinations, as well as a flexible pool of on-call staff resources to support and supplement the in-house contractor services, as needed.

TASK ASSIGNMENT REQUEST TYPES: NYMTC anticipates that task assignment requests, under each Lot, will be initiated per the approved NYMTC Unified Planning Work Program (UPWP). No guarantee of task assignment work can be made. The level of detail and the expected deliverables for each task assignment may vary yet will be specified per each task assignment request. Approved task assignments shall be added to each PSA5 agreement via side letters. For all tasks assignment requests, Consultants must provide requested staff augmentation services and task assignment management with not-to-exceed rates from the term agreement. All task assignment work requested under the resulting PSA5 term agreements are to be consistent with the intent of these Lots.

Proposers may submit proposals for an individual Lot, multiple Lots, or, if qualified, for all Lots. Proposers must demonstrate that they have the expertise, experience, and resources available to perform all the work presented in the Scope of Services for each Lot proposed and provide personnel as timely as possible after the Notice to Proceed (NTP) for a Task Assignment Request (TAR). NYMTC/NYS DOT will NOT accept partial proposals within each Lot and such proposals will be deemed non-responsive.

See RFP Attachment 14 for more complete descriptions of services to be provided per each advertised Lot. Unless otherwise noted, it is anticipated that the primary personnel assigned to each Lot shall primarily work full time at NYMTC's Central office in lower Manhattan or telework from an alternative work location via a pre-approved telework plan. Assigned services may be provided within NYMTC, at any of NYMTC's three Transportation Coordinating

Committees (MHSTCC, NSTCC, and NYCTCC) or at the New York State Department of Transportation at either its Main Office or at any of its regional offices.

#### Personnel Requirements:

For each Lot, the selected Consultant shall make available (after reasonable notice) key personnel (consultant staff augmentation) qualified to perform services to deliver each scope after award of a Contract.

After a Contract has been fully approved and notice to proceed has been given to the selected Consultant, for each awarded Lot, NYMTC requires that the team of key personnel proposed by the Consultant be available to start work promptly; in no such event shall proposing personnel exceed forty (40) business days. All replacement key personnel, including additional subconsultants added after contract award, shall have comparable or higher technical quality at the same or lower cost and shall be subject to NYMTC/NYSDOT approval.

Unless pre-approved in writing by NYMTC, the Consultant shall not remove or reassign any of the key personnel until such time as the key personnel have reasonably completed all of their planned and assigned responsibilities in connection with performance of the Consultant's obligations under this Contract. The Consultant agrees that the continuity of key personnel is critical and agrees to the continuity of key personnel. Removal of key personnel without written consent of NYMTC may be considered by the State to be a material breach of the Contract. The prohibition against removal or reassignment shall not apply where key personnel must be replaced for reasons beyond the reasonable control of the Consultant including but not limited to illness, disability, resignation or termination of the key personnel's employment.

During periods of reduced workload, the NYMTC Project Manager may request that the Consultant team work a reduced schedule, with thirty days' notice to the Consultant Team. The selected consultant's on-site contractor may be requested to resume the regular work schedule with 10 business days' notice.

### **3.2 Contract Objectives**

**CONSULTANT SELECTION:** To select multiple responsive, responsible and fully qualified Prime Consultants using NYSDOT's Best Value method based on a fair, equitable and thorough examination of Proposals submitted in response to the RFP. NYTMC and NYSDOT will accept a team of consultants wherein the contract will be with the Prime Consultant.

**DRAFT CONTRACT ACCEPTANCE:** The RFP's Draft Contract Terms and Conditions (Attachment 1) shall be accepted as is, after all interested parties have been given sufficient opportunity to review and ask questions regarding the draft's contract's terms and conditions prior to the submission of Proposals.

**MULTIPLE AWARDS:** Multiple contract awards may be made. Contracts will be separately awarded to each firm based on best value received for each Lot. If a firm is awarded more than one Lot, then each awarded Lot shall be rolled into individually awarded contracts by firm; if a firm is awarded all Lots, then each awarded Lot shall be rolled into one awarded contract.

**MAXIMUM AMOUNT PAYABLE:** Based on historical and projected usage, each awarded Lot shall have an an predetermined-anticipated five-year Maximum Amount Payable, subject to NYMTC's discretion, based on the information provided below. If a firm is awarded more than

one Lot, then the five-year Maximum Amount Payable for the resulting contract will be the sum of these ~~predetermined-anticipated~~ amounts for each lot awarded.

Lot 1 - Programs and Grants Support	\$2,000,000
Lot 2 - Data Collection, Monitoring and Analysis	\$2,500,000
Lot 3 - Geographic Information System (GIS) Support	\$2,000,000
Lot 4 - Public Involvement, Outreach and Engagement Support	\$3,500,000
Lot 5 - Model Support, Updates and Enhancements	\$5,250,000
Lot 6 - Transportation Conformity Determination Support	\$2,625,000

**FAIR AND EQUITABLE TREATMENT:** All Proposers participating in the competitive selection process will be treated fairly and equitably.

**CONTRACT TERM:** The base term of each contract awarded under this RFP will be for sixty (60) months or five contract years commencing from the contract start date with one 12-month term extension upon written agreement of NYMTC, NYSDOT, and the Consultant and approval of the New York State Office of the Attorney General, the New York State Office of the State Comptroller and the Federal Highway Administration (FHWA) as applicable. The estimated start is ~~June~~ July 2022.

**GOOD FAITH:** Consultants are expected to work with, communicate with, and negotiate with, NYMTC/NYSDOT in good faith. Consultants shall not knowingly misrepresent any products and services, relevant information, themselves, or their Subconsultants. Consultants are also expected to demonstrate good faith efforts towards the attainment of any identified and applicable civil rights participation goals.

## 4 LOTS

### 4.1 Lots

COMPENDIUM OF LOTS: Consultants are being sought to provide full, capable teams of personnel to complete an entire Lot. For each awarded Contract, the selected Consultant shall make available (after reasonable notice) key personnel qualified to perform support services associated with delivery of each awarded Lot. Detailed descriptions for the Compendium of Lots is presented in Attachment 14 with a summary list as follows:

Lot 1. Programs and Grants Support

Lot 2. Data Collection, Monitoring and Analysis

Lot 3. Geographic Information System (GIS) Support

Lot 4. Public Involvement, Outreach and Engagement Support

Lot 5. Model Support, Updates and Enhancements

Lot 6. Transportation Conformity Determination Support

Each Lot requires performance and delivery of a staff augmentation project in support of NYMTC's staff to assist in delivering NYMTC's metropolitan transportation planning program. The depth of available Consultant staff is important to NYMTC. The level of detail and expected deliverables for each Lot varies and is specified in Attachment 14.

For common referential and proposal development purposes, the RFP's Attachment 11 'Contract Job Categories' establishes job categories and specifies the job categories that proposers shall use for each Lot. Please reference RFP Attachment 11 for the job categories. NYMTC/NYS DOT will not accept alternative job categories.

MONTHLY PROGRESS REPORTS: Each Consultant shall prepare and submit to the appropriate NYMTC Project Manager a monthly progress report and invoice for the specific task or tasks completed during the preceding month within 21 calendar days of the end of such month.

CONSULTANT FILES: Each Consultant shall establish and maintain Contract work files, one for each awarded Lot. The Consultant must make these files available to NYMTC and NYSDOT upon written request from NYMTC or NYSDOT. The files shall contain handwritten notes, calculation sheets, records of outside contracts, collected data, and any other pertinent information relative to the implementation of this Contract. This is in addition to accounting books and records, including time sheets, payroll registers, ledgers and other records documenting costs associated with this Contract. NYMTC/NYS DOT has the right to ask for and inspect the Contract files anytime during the term of this Contract and three years after termination of this Contract.

## 5 PROPOSAL CONTENT AND FORMAT

### 5.1 General

Electronic Submission. Proposals shall be electronically submitted to NYMTC and to NYSDOT Contract Management by 2:00 PM EST on ~~January 27~~February 14, 2022. NYMTC/NYSDOT Contract Management shall utilize a NYS managed file transfer protocol (mySend.ny.gov) for RFP #PSA5. Proposers are to electronically submit their Proposal files. Proposers shall send one email to ([Patricia.Kappeller@dot.ny.gov](mailto:Patricia.Kappeller@dot.ny.gov)) and Seitu Allen ([seitu.allen@dot.ny.gov](mailto:seitu.allen@dot.ny.gov)) expressing their intent to submit their Proposal electronically at that time. NYSDOT Contract Management will then send the Proposer an invitation to mySend so the Proposer can upload their RFP submission files to the mySend site. Acknowledgement of Proposal receipt via e-mail shall be sent to the Proposer to confirm NYSDOT's successful receipt of electronically-submitted Proposals. Proposers are advised to provide ample time to address any technological errors prior to Proposal deadlines.

Electronic submission file name nomenclature:

- Technical and Management Proposals Word Document: LOT#N\_TMP\_FirmName.docx
- Technical and Management Proposals PDF Document: LOT# N\_TMP\_FirmName.pdf
- Cost Proposals Word Document: LOT# N\_CP\_FirmName.docx
- Cost Proposals PDF Document: LOT# N\_CP\_FirmName.pdf
- Cost Proposals Attachment 13 Excel Document: LOT# N\_Attachment 13\_FirmName.xlsx
- Cost Proposals Attachment 13 Excel Document: LOT# N\_Attachment 13\_FirmName.pdf
- Administrative Proposal Word Document: LOT# N\_AP\_FirmName.docx
- Administrative Proposal PDF Document: LOT# N\_AP\_FirmName.pdf

where “N” will be replaced by the Lot number for which a proposal is submitted and “FirmName” will be replaced by the name of the prime firm submitting the proposal.

Proposers may bid on any or all of the Lots presented in Attachment 14. For the purposes of evaluation, separate Proposals for each Lot must be submitted in three (3) parts:

- A. Part I shall consist of the Technical and Management Proposal
- B. Part II shall consist of the Cost Proposal
- C. Part III shall consist of the Administrative Proposal

Note:

- Part I information is NOT to be included in any Part II or any Part III Proposal
- Part II information is NOT to be included in any Part I or any Part III Proposal
- Part III information is NOT to be included in any Part I or any Part II Proposal

Complete proposals must be separately submitted for each Lot. Submitting more than one Lot in a single proposal submission could be grounds for dismissal.



## **5.2 Part I: Technical and Management Proposal**

Technical proposals that merely repeat the requirements set forth in the RFP and state that Contractor “will perform the statement of work” or similar verbiage will be considered technically unacceptable and will not receive further consideration.

Part I shall include the following sections:

### **1. Cover Letter and Title Page**

Provide a Title Page which lists name, address and phone number of the Proposer, and the name, title, address, email, and telephone number of person(s) with official authority to negotiate, bind the company to a contract, and who may be contacted during the procurement process. The title page should read:

**PSA5 Consultant Planning Service Agreement for NYMTC RFP  
Technical & Management Proposal – [Specify Lot number here]**

The cover letter shall provide a brief description of the proposed approach, work effort, and resulting product. Confidential and proprietary information should also be identified and addressed in this section.

### **2. Technical and Management Proposal Checklist**

### **3. Table of Contents**

- a. Identify each major section and page numbers

### **4. Approach By Lot**

- a. Provide the firm’s overall approach for performing all required staff augmentation work and accomplishing the objectives for each proposed Lot.
  - i. Discuss your firm’s ability to reasonably provide qualified consultant personnel when responding to assignment requests and your firm’s ability to ensure that all consultant personnel assigned to a proposed Lot are available to provide requested support services in a time frame which meets the Lot’s schedule.
- b. Provide examples of specific and relevant work done to support such efforts for each proposed Lot.
  - i. Provide brief, concise descriptions of similar relevant work done to support NYMTC’s metropolitan transportation planning work (per its annual UPWP) and other relevant, related transportation planning work required for each proposed Lot.
  - ii. Provide a discussion on the important issues involved in the implementation of each proposed Lot.
  - iii. Include enough substantive discussion to demonstrate an understanding of NYMTC’s objectives for each proposed Lot and familiarity with applicable laws, rules, etc.

### **5. Project Management**

- a. Provide an organizational chart with supporting narrative, showing the names, Job Categories and Levels, and roles of the proposed Consultant Project Manager and all key personnel assigned to each proposed Lot.
- b. If subcontractors are to be used, explain the need and how they will be incorporated into each proposed Lot’s effort and describe the arrangements. Discuss your plan for phasing project personnel into the assignment during the contract’s duration and for maintaining quality personnel over the contract’s five-year term for each proposed Lot.

## **6. Experience**

- a. Qualifications and prior relevant experience of proposed personnel is of great importance to NYMTC/NYS DOT. Direct, prior experience in the specific subject matter (specific to each proposed Lot) is required.
    - i. Provide relevant Firm Experience (via completed Attachment 10)
    - ii. Provide relevant Consultant Project Manager experience and expertise (via completed Attachment 12).
    - iii. Provide relevant Consultant Project Manager, one for each Lot. For firms submitting Proposals for multiple Lots, if desired, the same Consultant Project Manager may be identified for multiple contracts. In such a case, discuss how the Consultant Project Manager will be able to manage multiple Lots.
    - iv. Via Attachment 12 and for each proposed Lot, provide qualifications for all consultant/subconsultant key personnel. Identify which staff will be primarily assigned to each proposed Lot, along with other staff that may be brought in based on the demands and complexity of the assignment. For each proposed staff person (including subconsultant staff):
      1. Provide a resume for each key individual that will be made available to NYMTC for the specific Lot.
      2. Include descriptions of services to be delivered by each assigned key personnel. Identify the factors that will influence key personnel assignments, such as complexity of the project, duration, etc. Discuss the extent and quality of interaction with key external stakeholders and participants for each proposed Lot.
      3. Discuss contingency plans for key personnel assignments for each proposed Lot.
- 7. Relevant Company and Product Literature:** Provide any applicable, relevant brochures, white papers, technical specifications, etc., as supplemental information to help illustrate your company's capabilities, products, and offerings (product/service tiers, licensing options, etc.) to support each proposed Lot. Please make sure all additional documentation is referenced in the Proposal's Table of Contents

### 5.3 *Part II: Cost Proposal*

Part II shall include the following sections:

**1. Cover Letter and Title Page**

Provide a Title Page which lists name, address and phone number of the Proposer, and the name, title, address, email, and telephone number of person(s) with official authority to negotiate, bind the company to a contract, and who may be contacted during the procurement process. The title page should read:

**“PSA5 Consultant Planning Service Agreement for NYMTC RFP Cost Proposal – [Specify Lot number here]”.**

The cover letter shall provide a brief description of the proposed approach, work effort, and resulting product (the same cover letter submitted in your Technical proposal can be used in your Cost proposal). Confidential and proprietary information should also be identified and addressed in this section.

**2. Cost Proposal Checklist**

**3. Table of Contents**

- a. Identify each major section and page numbers

**4. Job Category and Rates**

- a. For each proposed Lot, NYMTC and NYSDOT require that all Job Category and Billing Rate information be presented using the RFP’s provided Microsoft Excel Workbook (see Attachment 13: Cost Proposal).

Section 1, Section 2, and Section 3 shall be compiled and submitted as a single document in both Word and PDF format. Section 4 shall be submitted in Excel and PDF format.

Non-Salary Costs. NYSDOT and NYMTC acknowledge that all direct non-salary costs associated with submitting a proposal cannot be estimated at this time, are not to be included in your proposal submission, and are to be proposed at the time of Task Assignment Request response submission. Other direct costs shall be reasonably reimbursed by the State. Please do not present Direct Non-Salary Costs (DNSC) in your Part II submission. Actual DNSC budgets shall be proposed and negotiated via Task Assignment Request responses. Once a Part B Task Assignment Request response has been submitted, costs cannot be increased and reimbursement rates for labor and/or DNSC cannot be increased.

#### 5.4 Part III: Administrative Proposal

Part III shall include all of the following required information or completed RFP attachments:

##### **Administrative Proposal Checklist (Table 3)**

**Vendor Responsibility:** In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All Proposers of contracts valued at \$100,000 or more, and subconsultants with services valued at \$100,000 or more shall be required to submit a Vendor Responsibility Questionnaire through the office of the State Comptroller at: <http://www.osc.state.ny.us/vendrep/index.htm> and include a copy of the online certification, or include a hard copy of the completed Vendor Responsibility Questionnaire.

**Attachment 3 Acknowledgement of Receipt (Form OAR; Mandatory Requirement):** Complete and submit Attachment 3 which will be administratively evaluated during the procurement process. It is a mandatory RFP requirement that all Proposers acknowledge receipt of each RFP Modification released. Do not include any released RFP Announcements.

**Attachment 4 PLL Forms (Mandatory Requirement):** The Administrative Submission shall include completed Attachment 4 Procurement Lobbying Law (PLL) Compliance Forms (Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) and Offerer's Disclosure of Prior Non-Responsibility Determinations). These forms are required with the RFP Response Form or if you do not submit an RFP Response Form then the PLL forms are required with the Proposal. These forms are also available at: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions> (Compliance Procurement Lobbying Law). *Note: Failure to submit the completed PLL forms with your Proposal will result in elimination from consideration for contract award.*

**Attachment 5 Prime Consultant Information & Certifications (Mandatory Requirement):** Offerors shall complete and submit RFP Attachment 5 which will be administratively evaluated during the procurement process. To indicate consultant's acceptance of all of the terms and conditions contained in the RFP's draft Contract (Attachment 1) and to certify RFP requirements, consultant shall sign Attachment 5 and present requested information about the proposing Prime Consultant, as required by Attachment 5. Attachment 5 also requires the signature of an official authorized to bind the offeror to all of its provisions, a statement certifying that the Proposal shall remain valid for at least 365 days, and a statement that, if awarded the contract, the offeror will comply with all the requirements of the RFP including its attachments. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and may lead to the Proposal being deemed non-responsive and subsequently dismissed. After Proposal submission, no exceptions to any of the RFP's draft contract's terms and conditions will be entertained by NYSDOT. Conditional bids will be deemed non-responsive. Failure to accept the RFP's draft contract is an automatic condition of non-award. Firms are encouraged to fully examine the RFP's draft contract. Firms have the opportunity to submit qualified questions regarding the RFP's draft contract before Proposal submission. NYSDOT will carefully examine questions posed regarding the RFP's draft contract, with the notion of entertaining only those changes to the RFP's draft contract which are in the State's best interest.

Attachment 5A Subconsultant Information: Offerors shall complete and submit RFP Attachment 5A (one for each proposed Sub-Consultant) which will present requested information about proposed Subconsultants and will be administratively evaluated during the procurement process.

Attachment 6 Certification of Non-Collusive Bidding (Mandatory Requirement): Offerors shall complete and submit Attachment 6 which will be administratively evaluated during the procurement process. All Bidders must submit an attestation that there was no collusion with other bidders. Firms shall also identify any partnerships or corporations to which they belong.

Attachment 7 Vendor Assurance of No Conflict of Interest or Detrimental Effect (Mandatory Requirement): Offerors shall complete and submit Attachment 7 which will be administratively evaluated during the procurement process.

### ***5.5 Proposal Submission***

The Proposal shall be signed by an official authorized to bind the Proposer. Proposers shall submit one (1) complete electronic copy of the Part I – Technical and Management Proposal, one (1) complete electronic copy of the Part II – Costing Proposal, and one (1) complete electronic copy of the Part III - Administrative ~~Submission~~Proposal.

~~All Proposals must be e-mailed to Patricia Kappeller (Patricia.Kappeller@dot.ny.gov) and Seitu Allen (seitu.allen@dot.ny.gov).~~ NYMTC and NYSDOT will acknowledge receipt of successfully submitted proposals that have been successfully uploaded to the mySend site and received by NYMTC and NYSDOT. Proposers are advised to provide ample time to address any technological errors prior to Proposal deadlines.

## 6 PROPOSAL EVALUATION PROCESS

### 6.1 Pre-Screening of Proposals

~~Proposals shall be pre-screened to determine if all received proposals pass the RFP's mandatory requirements. Proposals passing all mandatory requirements shall be screened to determine if all proposals meet all minimum RFP responsiveness, referenced in Section 1.4, and detailed in Table 1, Table 2, and Table 3. Proposals which do not meet all mandatory requirements shall be deemed non-responsive; proposals which fail to meet all minimum responsiveness requirements may be deemed non-responsive. Any proposal deemed to be non-responsive shall be removed from further consideration. NYSDOT will conduct a pre-screening of each Proposal received by the Proposal due date.~~

#### Proposal Due Date

All Proposals must be electronically received by NYMTC and by NYSDOT Contract Management by 2:00 PM EST on February~~January~~ 27~~14~~, 2022. Any Proposals received after that time/date shall not be evaluated further but shall become NYSDOT property.

#### Proposal Opening, Log-in and Certification

Proposals received on or prior to the Proposal due date and time will be opened, certified as received, and inventoried for completeness and responsiveness. For Proposals received before/on the due date, firms may receive clarification questions/requests based upon the response completeness checks, with any requested clarification information due back to NYMTC/NYSDOT by COB that same day.

#### Pre-screening

Once logged in, NYMTC/NYSDOT shall pre-screened proposals to determine if all received proposals pass the RFP's mandatory requirements. Proposals passing all mandatory requirements shall be screened to determine if all proposals meet all minimum RFP responsiveness, referenced in Section 1.4, and detailed in Table 1, Table 2, and Table 3. Proposals which do not meet all mandatory requirements shall be deemed non-responsive; proposals which fail to meet all minimum responsiveness requirements may be deemed non-responsive. Any proposal deemed to be non-responsive shall be removed from further consideration. NYMTC/NYSDOT will conduct a pre-screening of each Proposal received by the Proposal due date. It is NYMTC's/NYSDOT's sole discretionary determination as to whether a Proposal is complete.

~~will pre-screen each Proposal to ensure all contents have been submitted in accordance with the mandatory and minimum Proposal requirements as specified in the RFP. It is NYMTC's/NYSDOT's sole discretionary determination as to whether a Proposal is complete. Proposals which meet the RFP responsiveness requirements shall be considered further; Proposals which do not meet the RFP responsiveness requirements may be deemed non-responsive. Proposals deemed to be non-responsive shall be removed from further consideration.~~

Proposals passing pre-screening shall then be evaluated using a best value method which considers a combination of technical and cost criteria as described below. Technical considerations are of greater importance than cost considerations; however, cost is a significant factor in the evaluation of Proposals.

## **6.2 Proposal Evaluation**

Proposals will be evaluated using a best value method based upon a 100 total point scale. The Technical and Management Proposal will be evaluated and point scored against a maximum perfect score of 75 best value points. The Cost Proposal will be evaluated for RFP instruction compliance and reasonableness, with the total lowest Cost Proposal receiving a perfect best value score of 25 points. **This RFP does not feature shortlisting.** The Administrative Proposal will not be point scored but will be evaluated for compliance with the RFP's mandatory and minimum Proposal submission requirements as cited in RFP Section 5.4. A more detailed breakdown of the RFP's technical and Costing Proposal factors follows.

## **6.3 Technical and Management Proposal Evaluation**

### **6.3.1 General**

Technical evaluation of Proposals will be accomplished by the members of a Technical Evaluation Committee (TEC) comprised of appropriate technical, program and management subject matter experts to evaluate each proposed Lot. An evaluator package shall be prepared and submitted to members of the TEC; this package shall contain evaluator instructions, evaluation instruments and shall become part of the procurement record. The TEC shall be briefed on the Proposal evaluation process prior to distribution of Proposals. Members of the TEC agree to sign confidential non-disclosure agreements and conflict of interest statements.

Members of the TEC will evaluate and score each proposed Lot separately and individually. Each evaluator shall measure the degree of responsiveness of each proposed Lot against the RFP's specifications and requirements using the RFP's evaluation factors. Members of the TEC shall document their responsiveness findings and record a whole number numerical score. TEC evaluation shall result in average weighted Technical and Management Proposal scores by Lot by firm.

### **6.3.2 Technical and Management Proposal Evaluation (Up to 75 Points for each Lot)**

Technical proposals shall not be compared to each other. Instead, the TEC shall independently measure responsiveness of each proposed Lot against the RFP's technical requirements and specifications. In other words, technical Lot #1 proposed by Firm A shall be independently evaluated against the RFP's requirements; technical Lot #1 proposed by Firm B shall be independently evaluated against the RFP's requirements, etc.

The technical evaluation criteria listed below, in descending order of importance, shall be used by the TEC to measure proposed technical responsiveness:

1. Experience
  - a. Key Non-managerial Personnel Experience: Quality, extent and relevance of Lot-relevant experience, education and training of proposed Consultant personnel that will be assigned to provide support services per the specifications contained in the proposed Lot
  - b. Firm Experience: Quality, extent and relevance of current and prior experience of the Prime Consultant and all proposed Subconsultants related to the proposed Lot.
2. Project Management
  - a. Quality of proposed project management including experience of proposed Consultant Project Manager, project organizational structure and appropriateness of key staffing assignments and job categories/levels in the proposed Lot.
  - b. Quality of plan for maintaining availability of qualified personnel over the life of the contract for the proposed Lot including plan to factor in key personnel assignments based on complexity of the required services.
3. Approach and Scope:
  - a. Degree to which Proposal reflects understanding and comprehension of the proposed Lot's scope.
  - b. Quality of approach to accomplish the proposed Lot's objectives including addressing important issues involved in the implementation of the specific Lot.

Reference Checks: To verify offered experience, reference checks shall be evaluated to complete the evaluation of technical Proposals. All offered references shall be contacted via a standard reference check questionnaire and shall have three business days to respond. Reference check feedback shall be forwarded to the TEC for further experience evaluation consideration.

Clarification Questions: NYMTC and NYSDOT reserve the right to seek written clarification responses from firms submitting Proposals in order to assure a full understanding of their responsiveness to the solicitation's technical requirements throughout the entire Proposal evaluation process. If written clarifications, based upon Proposal review, are requested by the Technical Evaluation Committee (TEC), all firms submitting a proposed Lot shall receive written clarification questions via e-mail, with three business days to respond. Evaluators will be allowed to revise their technical Lot evaluation scores based on receipt and consideration of this additional clarifying information and follow-up TEC discussions. Reasons for any score changes shall be documented.



### 6.3.3 Cost Proposal Evaluation (Up to 25 Points for each Lot)

Costs shall be submitted by Lot. Cost Proposals will be evaluated and relatively point scored to account for up to 25 points of a total best value score for each proposed Lot. In other words, total Lot #1 costs for Firm A will be competitively compared to total Lot #1 costs for Firm B, etc.

Attachment 13 automatically calculates the estimated five-year total value (cost) of providing services by Lot via the following method:

1. Using Attachment 13's rate-calculation method, Vendors offer competitive fully-loaded not-to-exceed home-overhead-based rates and on-site or field overhead-based rates by Lot-required Job Categories and Levels for Contract Year One.
2. Attachment 13 automatically calculates rates for Contract Years Two through Five.
3. Attachment 13 multiplies a specified annual hours of effort for each Job Category and Level by the applicable proposed home-overhead-based rate and by the applicable on-site or field overhead-based rate. The RFP specifies which overhead is applicable by Job Category and Level by Lot. This exercise gets repeated to cover all five years, generating total value of proposed cost for all Lot required Job Categories and Levels.
4. Total competitive five-year required labor cost estimates are summed to derive total five-year value of proposed cost by Lot.

The calculation of a Lot cost score is then based on the following method:

1. The proposed Lot with the lowest total value of proposed cost per Attachment 13 will receive the full amount of cost score points (25).
2. A proposed Lot with relatively higher total value of proposed cost per will receive proportionately lower cost scores.
3. This point total will be calculated by dividing the lowest value of proposed cost by the value of proposed cost of each proposal, multiplied by the maximum weight for cost proposal evaluation (25%).
4. A final cost score by Lot shall be calculated once all cost proposal evaluations have been completed.

#### 6.3.4 Initial Best Value Determination

Initial best value will be determined by each Lot as follows:

LOT #1: By each firm submitting a responsive proposal: Proposed total Lot #1 cost scoring results will be added to the initial average weighted Lot #1 technical proposal scores to generate an initial Lot #1 best value score by firm. This procedure shall be repeated for each firm submitting a Lot #1 proposal.

LOT #2: By each firm submitting a responsive proposal: Proposed total Lot #2 cost scoring results will be added to the initial average weighted Lot #2 technical proposal scores to generate an initial Lot #2 best value score by firm. This procedure shall be repeated for each firm submitting a Lot #2 proposal.

LOT #3: By each firm submitting a responsive proposal: Proposed total Lot #3 cost scoring results will be added to the initial average weighted Lot #3 technical proposal scores to generate an initial Lot #3 best value score by firm. This procedure shall be repeated for each firm submitting a Lot #3 proposal.

LOT #4: By each firm submitting a responsive proposal: Proposed total Lot #4 cost scoring results will be added to the initial average weighted Lot #4 technical proposal scores to generate an initial Lot #4 best value score by firm. This procedure shall be repeated for each firm submitting a Lot #4 proposal.

LOT #5: By each firm submitting a responsive proposal: Proposed total Lot #5 cost scoring results will be added to the initial average weighted Lot #5 technical proposal scores to generate an initial Lot #5 best value score by firm. This procedure shall be repeated for each firm submitting a Lot #5 proposal.

LOT #6: By each firm submitting a responsive proposal: Proposed total Lot #6 cost scoring results will be added to the initial average weighted Lot #6 technical proposal scores to generate an initial Lot #6 best value score by firm. This procedure shall be repeated for each firm submitting a Lot #6 proposal.

#### 6.3.5 Firm Ranking

For each Lot number, firms shall be ranked in initial best value score order, highest to lowest.

#### 6.3.6 Proposal Withdrawal

Should any firm withdraw their Proposal during the Proposal evaluation process, NYMTC/NYS DOT will remove that firm's technical and cost information from the Best Value evaluation documentation and shall recalculate the remaining field's technical and cost scores (without the withdrawn firm's information).

### 6.3.7 Best and Final Offers (BAFO; Optional)

NYMTC/NYS DOT reserves the right to request Best and Final Offers (BAFO) from firms after initially completing the technical and cost proposal evaluation step. NYMTC/NYS DOT may recommend PSA contract award without requesting a BAFO. Any Best and Final Offer request may ask additional further clarifying technical and/or cost proposal questions of firms to further clarify their submitted Proposals. NYMTC/NYS DOT also may request a cost only BAFO. Should NYMTC/NYS DOT opt to request BAFOs, all firms submitting responsive proposals will receive a BAFO request. Responding firms will be allowed to submit a Best and Final Offer response (technical and/or cost) with cover letter; firms may opt to not submit a BAFO. Evaluators will be allowed to revise their technical proposal scores based on their consideration of any new or changed Technical Proposal information contained in any Best and Final Offer (will re-sign/re-date the applicable hardcopy scoresheets). If changes to a firm's Technical Proposal lead to corresponding, necessary revisions to their Cost Proposal (or should a firm opt to clarify their Cost Proposal) or should the Department opt to request cost-only BAFOs, NYMTC/NYS DOT's Contract Management representative shall make the necessary, appropriate adjustments to that firm's Cost Proposal evaluation.

### 6.3.8 Final Best Value Determination

*Tie-Breaking Rule:* Should any of the tentative final best value scores by Lot for one or more proposals competing for the contract award lie within one and one-half points of each other, then State Finance Law Section 163(10)(a) shall be used to settle any ties.

Once all possible proposal evaluation has concluded, the field of firms competing for contract award shall be listed in final best value rank order by Lot. Contract award shall be determined via the following method:

- A contract for Lot #1 shall be awarded to the firm submitting the best value for Lot #1.
- A contract for Lot #2 shall be awarded to the firm submitting the best value for Lot #2.
- A contract for Lot #3 shall be awarded to the firm submitting the best value for Lot #3.
- A contract for Lot #4 shall be awarded to the firm submitting the best value for Lot #4.
- A contract for Lot #5 shall be awarded to the firm submitting the best value for Lot #5.
- A contract for Lot #6 shall be awarded to the firm submitting the best value for Lot #6.
- Any firm awarded more than one Lot shall have all awarded Lots rolled up into one resulting contract.

### 6.3.9 Consultant Selection Recommendation & Tentative Contract Award

A consultant selection and designation memo shall be prepared and forwarded to the applicable NYMTC Executive Manager(s) with an accompanying Proposal evaluation process results by Lot report. The memo shall recommend selection of Best Value Consultant(s) for tentative contract award(s) to NYMTC Management. NYMTC Management will then make a recommendation to NYSDOT Management, with the latter being asked to concur with the final conclusion of the Proposal evaluation process - a recommendation for tentative contract award(s) for the Department - and designate the Best Value rated consultant(s) based upon the above results.

Should negotiations with the top Best Value Consultant fail to produce an agreed-upon contract by awarded Lot, then NYSDOT Executive Management will designate and award the applicable Lot to the next highest-ranked Best Value Consultant (should such a firm be listed on the final

best value listing). The Department will then enter into negotiations with the next available highest-ranked Best Value Consultant. This process may repeat itself until acceptable contracts are consummated for all proposed Lots. Consultant designations by Lot becomes final after the NYS Office of the State Comptroller approves the resulting contracts.

At the conclusion of the Proposal evaluation process, an announcement of NYSDOT's designation will be posted the 'Consulting Services' listing on NYSDOT's website via: <https://www.dot.ny.gov/business>. All Proposers will be notified in writing regarding the results from the solicitation. All non-designated firms participating in this RFP process will be offered an opportunity to request an over-the-telephone debriefing. A debriefing is limited to a review of how your Proposal fared against the RFP's requirements. Firms have up to 15 calendar days from receipt of consultant selection notice to request a debriefing in writing from the RFP's designated contact person.

Once the public has been notified of the solicitation's results, negotiations with the selected Consultant can commence. Each resulting final contract is subject to approval by NYSDOT, the NYS Attorney General, and the NYS Office of the State Comptroller, and is not binding until all such approvals are received.

It is expressly understood that this RFP does not commit NYSDOT to award a contract, to pay any costs incurred in the preparation of a Proposal to this request, or to procure or contract services or supplies. Further, NYSDOT shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation, unless and until a contract satisfactory to NYSDOT is approved and executed by the vendor and all necessary State officials.

#### 6.3.10 NYSDOT Protest Procedure

NYSDOT has established a protest procedure to be utilized when an interested party challenges a Non-Engineering Consultant designation by NYSDOT. The complete procedure can be accessed via: <https://www.dot.ny.gov/main/business-center/consultants/general-info>.

## **7 ADMINISTRATIVE SPECIFICATIONS**

### **7.1 *State's Rights***

All Proposals, upon submission to the Department, shall become its property for use as deemed appropriate. By submitting a Proposal, the Proposer covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. The Department attests to the following prerogatives with regard to Proposals submitted:

- a. To accept or reject any or all Proposals;
- b. To correct any arithmetic errors in any or all Proposals;
- c. To change the Proposal's due date upon appropriate notification to interested firms;
- d. To eliminate any mandatory RFP requirement(s) or specification(s) unmet by all Proposers in the evaluation of received Proposals;
- e. To adopt any or all of a successful Proposer's Proposal;
- f. To negotiate modifications to the scope, milestone payments schedule and total cost, and contract terms and conditions with the selected Proposer prior to contract award only if it is in the best interest of the State to do so;
- g. To disqualify a Proposer from receiving the award if such Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
- h. To revise/amend any provision of this RFP by written notification to Proposer's, prior to Proposal submission;
- i. To make inquiries, by means it may choose, into the Proposer's background or statements made in the Proposal to determine the truth and accuracy of all statements made therein;
- j. To select and award the contract to the Proposer whose Proposal represents the best value to NYSDOT; and
- k. Conduct contract negotiations with the next responsible Proposer, should NYSDOT be unsuccessful in negotiating with the selected Proposer.

### **7.2 *Consultant Responsibility When Proposing Former NYSDOT Employees***

It is the Consultant's responsibility to ensure they propose staff that is eligible to work on the proposed project. It is an individual's responsibility to comply with the Public Officer's Law.

The following procedure applies if either of the following criteria is met:

- a. It is two years or less between the date that the individual is proposed and the individual's date of separation from the State.
- b. The individual proposed has worked on the project while employed by NYSDOT regardless of how long ago they left NYSDOT.

## Procedure

- a. Before the Consultant proposes an individual, the individual must obtain an opinion from the New York State Joint Commission on Public Ethics (<http://www.jcope.ny.gov>) that approves their participation in the project as they are proposed.
- b. A copy of this opinion must be on file in the Consultant's office and available for review by NYSDOT if requested.
- c. Failure to obtain New York State Joint Commission on Public Ethics approval for an individual's participation in a project may jeopardize the firm's designation for that project.

### 7.3 *Method of Payment*

Accepted task assignment work shall be reimbursed via lump-sum budgets with fixed cost milestone payment schedules to deliver the services per the negotiated task assignment using the contract's fully loaded, not-to-exceed, hourly rates.

Requests for progress payments and final payments shall be made by the designated consultant on standard payment request forms (FIN-421). Use proper procedures for billing each deliverable. Submit a draft billing to NYMTC's assigned Project Manager via the following sample electronic billing: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>.

The sample spreadsheet contains all of the proper, required billing forms, as well as a sample billing. The Project Manager will respond via email either with comments/corrections or with an approval to submit the final billing via signed electronic copy. The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and standard NYS FIN 421 payment request form.

### 7.4 *Information for Selected Consultant(s)*

#### **Registration with NYSDOT**

Consultant firms entering into contracts with the New York State Department of Transportation (NYSDOT) as prime consultants, joint venture partners, or subconsultants, are required to electronically register their firm using the Consultant Selection System web application (CSSWeb) by creating and registering an account to: 1) create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; 2) provide general firm information including, but not limited to, legal name, Federal Identification Number (FEIN), ownership type, DBE/MBE/WBE status, firm principals, and office(s) address information. All consultant firms participating in a potential Contract must be registered electronically with NYSDOT prior to that Contract being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the Contract.

Consultant Firm Registration instructions are available at:

<https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>

Questions regarding the CSSWeb application and firm registration should be directed to the CSSWeb administrator at [css@dot.ny.gov](mailto:css@dot.ny.gov) or by telephone at (518) 457-2600.

## **Registration with Statewide Financial System (SFS)**

Should this solicitation lead to a designation, the Prime consultant(s) will be required to electronically register with the Statewide Financial System (SFS) – if not already registered. NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The result of this process is an established SFS vendor number assigned to the Prime Consultant. If a firm has already registered in SFS in conjunction with another procurement, it will not likely need to be registered for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT is doing business with.

## **Consultant Employment Disclosure Requirements**

Prime consultants should become familiar with the Consultant Employment Disclosure requirements, which went into effect June 19, 2006 at [https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/contractor\\_instr\\_forms\\_a\\_b.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/contractor_instr_forms_a_b.pdf). The Consultant selected for this solicitation shall be required to complete “State Consultant Services – Contractor’s Planned Employment” (Form A, Attachment 16) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Attachment 16) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15<sup>th</sup> of each year the contract is in effect.

## **Insurance Requirements**

Please carefully read the terms and conditions of the draft contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this project that are contained in Article 12 of the draft contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

## **Contractor Tax Certification**

Per section 5-a of the NYS Tax Law, all vendors selected for contracts in excess of \$100,000 for the sale of goods or services must complete and submit Forms ST-220-CA and ST-220-TD (Contractor Certifications). The forms and instructions are available at: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) (Form ST-220-CA) and [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) (Form ST-220-TD).

## **Certification Form EO-177**

In accordance with Executive Order No. 177, the successful Proposer will be required to certify that it does not have institutional practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. Certification Form EO-177 will be provided with the contract documents. The completed and signed certification must be returned with the firm’s executed contract.

## 7.5 *Inquiries and Information*

All questions concerning this solicitation must be directed only to the individual(s) specified in Section 1.5 of this RFP. The last date to submit questions for this solicitation is stated ~~in Section 7.6 below~~. Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to the respective NYMTC and NYSDOT website.

### Tentative Schedule of Key Events:

NYMTC and NYSDOT will attempt to adhere to the following tentative schedule with respect to processing this solicitation.

<u>NYS Contract Reporter Announcement:</u>	<u>Wednesday, December 1, 2021</u>
<u>RFP Release Date:</u>	<u>Monday, December 6, 2021</u>
<u>Pre-Proposal Webinar:</u>	<u>Wednesday, December 15, 2021 at 2 PM Eastern Standard Time (EST)</u>
<u>Question Submittal Due:</u>	<u>Wednesday, December 29, 2021</u>
<u>Answers Due/RFP Mod #1 Due:</u>	<u>Tuesday, January 11, 2022</u>
<u>Second Round Questions Due</u>	<u>Tuesday, January 18, 2022</u>
<u>Second Round Answers Due/RFP Mod #2 Due:</u>	<u>Tuesday, January 25, 2022</u>
<u>Proposals Due:</u>	<u>Monday, February 14, 2022 at 2 PM (EST)</u>
<u>Proposal Evaluation:</u>	<u>Tuesday, February 15, 2022</u>
<u>Recommendation &amp; Designation:</u>	<u>Tuesday, March 15, 2022</u>
<u>Final Contract:</u>	<u>Early May-2022</u>
<u>Contract Award:</u>	<u>Late May-2022</u>
<u>Estimated Notice to Proceed:</u>	<u>July-2022</u>
<del>NYS Contract Reporter Announcement:</del>	<del>Wednesday, December 1, 2021</del>
<del>RFP Release Date:</del>	<del>Monday, December 6, 2021</del>
<del>Pre-Proposal Webinar:</del>	<del>Wednesday, December 15, 2021 at 2 PM Eastern Standard Time (EST)</del>
<del>Question Submittal Due:</del>	<del>Wednesday, December 29, 2021</del>
<del>Answers Due/RFP Mod #1 Due:</del>	<del>Friday, January 7, 2022</del>
<del>Proposals Due:</del>	<del>Thursday, January 27, 2022 at 2pm EST</del>
<del>Proposal Evaluation:</del>	<del>Friday, January 28, 2022</del>
<del>Recommendation &amp; Designation:</del>	<del>Friday, February 18, 2022</del>
<del>Final Contract:</del>	<del>Friday, April 1, 2022</del>
<del>Contract Award:</del>	<del>April 2022</del>
<del>Notice to Proceed:</del>	<del>June 2022</del>



## 8 ATTACHMENTS

### 8.1 Attachment 1: Draft Contract

#### NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F.A. No.: \_\_\_\_\_

PIN: \_\_\_\_\_

COMPTROLLER'S CONTRACT NO.: #C\_\_\_\_\_

#### PROJECT TITLE: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC

This Contract made pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the Department of Transportation (hereinafter referred to as the "DEPARTMENT" or "NYSDOT") whose office is at 50 Wolf Rd, Albany, NY 12232, and

**Consultant Firm Name**

**Consultant Firm Address**

**Consultant Firm Address**

(hereinafter referred to as the "Consultant")

WITNESSETH:

WHEREAS, the DEPARTMENT desires the CONSULTANT because of its ability and reputation, to perform the services hereinafter mentioned upon the PROJECT which is fully described in SCHEDULE A and the CONSULTANT agrees to provide these services.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

#### ARTICLE 1 – PERFORMANCE OF WORK

The CONSULTANT shall perform all of the work described in SCHEDULE A and cause such work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this CONTRACT. The CONSULTANT shall perform the work in accordance with professional standards and with the diligence and skill expected of a company with extensive experience in the performance of work of the type described in SCHEDULE A. The CONSULTANT shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the work in accordance with this CONTRACT. The CONSULTANT'S Project Manager shall have the responsibility for the overall supervision and conduct the work on behalf of the CONSULTANT and that the persons described in SCHEDULE A shall serve in the capacities described herein. Any change of key personnel by the CONSULTANT shall be subject to the prior written approval of the STATE. The STATE reserves the option to extend the terms and conditions of this CONTRACT to any other state agency in New York subject to the approval of all necessary state officials.

The CONSULTANT shall commence work no later than ten (10) calendar days after receiving notice to proceed from the DEPARTMENT.

## **ARTICLE 2 – DOCUMENTS FORMING THE CONTRACT**

The CONTRACT documents shall be deemed to include this AGREEMENT (including Exhibits), the provisions required by state and federal law to be inserted in the CONTRACT as set forth in Appendix A, Appendix A-1, Appendix B, Appendix C, Appendix D, Schedule A (including Exhibits), Schedule B (including Exhibits), the DEPARTMENT’S Request for Proposals (RFP, dated December 6, 2021, including any modifications) incorporated by reference, and the CONSULTANT’S Proposal (dated \_\_\_\_\_, including any clarifications) incorporated by reference.

## **ARTICLE 3 – ORDER OF PRECEDENCE**

In the event of any inconsistencies between or among the provisions and contents of this CONTRACT, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

1. APPENDIX A;
2. The provisions required by state and federal law to be inserted in the CONTRACT as set forth in APPENDIX A-1, APPENDIX B, APPENDIX C, and APPENDIX D;
3. This CONTRACT, including Signature Page, Notary Page, and Exhibits;
4. SCHEDULE A (including Exhibits);
5. SCHEDULE B (including Exhibits);
6. The STATE’S Request for Proposals (including any modifications); and
7. The CONSULTANT’S Proposal.

## **ARTICLE 4 – TERM OF THE CONTRACT**

The CONSULTANT agrees to complete all work of this CONTRACT as required within a five-year base term, which shall commence on **MONTH DD, 2022** and end on **MONTH DD, 2027**. The CONTRACT may be extended for one additional year as may be agreed by the parties to the CONTRACT and as approved by the Office of the State Comptroller (OSC).

## **ARTICLE 5 – MAXIMUM AMOUNT PAYABLE**

Item I – The maximum aggregate amount payable by the STATE to the CONSULTANT hereunder for the performance and completion of the work under this agreement is **\$ \_\_\_\_\_** unless increased by an awarded supplemental agreement. It is understood and agreed that the STATE will only reimburse the CONSULTANT for approved costs incurred in the performance of authorized project tasks.

Item II – The CONSULTANT specifically agrees that the CONTRACT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose.

## **ARTICLE 6 – CONTRACT PAYMENT**

The CONSULTANT shall provide complete and accurate billing invoices to the DEPARTMENT to receive payment. Billing invoices submitted to the DEPARTMENT must contain all information and supporting documentation required by the CONTRACT, the DEPARTMENT and OSC. Payment for invoices submitted by the CONSULTANT shall only be rendered electronically unless payment by paper check is expressly authorized by the New York State Department of Transportation Commissioner (hereinafter referred to as the “COMMISSIONER”), in the COMMISSIONER’S sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices.

The CONSULTANT must enroll in the State Comptroller’s ePayments system to authorize electronic payments and acknowledges that it will not receive payment on any invoices submitted under this CONTRACT if it does not comply with the State Comptroller’s electronic payment procedures. Authorization instructions are provided on the State Comptroller’s website at: <https://www.osc.state.ny.us/vendors/epayments.htm>. For assistance, email [ePayments@osc.state.ny.us](mailto:ePayments@osc.state.ny.us).

## **ARTICLE 7. PROVISION FOR PAYMENT.**

The STATE shall pay to the CONSULTANT, and the CONSULTANT agrees to accept as full compensation for services provided under this agreement:

Item I Specific Hourly Rates of pay shown in SCHEDULE B (EXHIBITs 1 and 2) for employees assigned to this PROJECT. The Specific Hourly rates are not subject to audit, however, the number of hours charged is subject to audit.

Item II Actual Direct Non-Salary Costs incurred in fulfilling the terms of this AGREEMENT are subject to audit. Such costs may include, but are not necessarily limited to, those shown in SCHEDULE B of each Task Assignment Request response. All reimbursement for travel, meals and lodging shall be made at actual cost paid but such reimbursement shall not exceed the prevailing maximum rates established by the State Comptroller.

Items purchased under this PROJECT shall become the property of the STATE at the completion of the work, or at the option of the STATE, appropriate value shall be established as a credit to the STATE.

## **ARTICLE 8 – FINAL PAYMENT**

Section 179 of the State Finance Law required the STATE to make final payment within thirty (30) calendar days after receipt of an invoice which is properly prepared and submitted. The STATE in accordance with the provisions of State Finance Law has determined that the STATE will require a sixty (60) calendar day audit period for final payments at which time the 30-calendar day interest-free period will commence. The CONSULTANT is required to make final payment to all subcontractors/subconsultants within ten (10) calendar days of receipt of final payment from the State.

The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the STATE from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the

CONSULTANT under or in connection with this CONTRACT or for any part thereof except as otherwise provided in the paragraph below.

The CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and make such materials available at its office at all reasonable times during the term of this CONTRACT and for the period of time specified in Clause No. 10., "Records" of APPENDIX A, for inspection by the STATE, Federal Highway Administration (FHWA), or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested.

## **ARTICLE 9 – INSPECTION**

The duly authorized representatives of the STATE, and on Federally aided projects, representatives of the Federal Highway Administration (FHWA), shall have the right, at all times, to inspect the work of the CONSULTANT.

## **ARTICLE 10 – EXTRA WORK**

If the CONSULTANT believes that any work is, or may be, beyond the scope of the CONTRACT (extra work), or that additional work is necessary, the CONSULTANT shall notify the STATE, in writing of this fact prior to beginning any work. The notification shall include all information required by the DEPARTMENT. The STATE shall be the sole judge as to whether or not such work is in fact beyond the scope of this CONTRACT and constitutes extra work. No extra or additional work shall be started prior to written authorization from the STATE. The STATE shall be under no obligation to reimburse the CONSULTANT for any extra or additional work performed without the prescribed notification and authorization. The STATE will not allow fixed fee for any extra work undertaken without prescribed notification and authorization. In the event that the STATE determines that such work does constitute extra work, the STATE shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the STATE to the CONSULTANT for execution after approval have been obtained from necessary STATE officials, and if required, from the Federal Highway Administration.

In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render the STATE all assistance required by the STATE. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this CONTRACT for the additional services above described, the STATE's directions shall be exercised by the issuance of a separate contract, if necessary.

## **ARTICLE 11 – CONSULTANT LIABILITY**

To the fullest extent permissible by law, the CONSUTLANT shall indemnify and save harmless the STATE, and any municipality, public benefit corporation, railroad, and/or public utility whose property or facilities are affected by the work, from suites, claims, actions, damages and costs, of every name and description arising from the work under its contract during its prosecution and until the final acceptance thereof. The CONSULTANT and any assigns, heirs, or successors in interest shall also indemnify and save harmless, to the fullest extent permitted by law, the inspecting engineer or inspector working for the STATE relative to the PROJECT from suits, claims, actions, damages and costs involving personal injury and property damage arising

from the CONSULTANT'S work under the CONTRACT during its prosecution and until the final acceptance thereof. The STATE may retain such monies from the amount due the CONSULTANT as may be necessary to satisfy any claim for damages recovered against the STATE, any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the work or consultant inspecting engineers or inspectors working for the STATE relative to the PROJECT. The CONSULTANT'S obligation under this paragraph shall not be deemed waived by the failure of the STATE to retain the whole or any part of such monies due the CONSULTANT, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the CONSULTANT under the CONTRACT, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the CONSULTANT, Subconsultant or any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, or for any consultants working for the STATE. It is understood by the STATE and the CONSULTANT that the CONSULTANT'S Professional Liability/Errors and Omissions Policy required in the Article 12 -Insurance of this CONTRACT shall be utilized for claims involving the CONSULTANT'S professional negligence.

The CONSULTANT has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall include the cost of attorney's fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation to indemnify in the foregoing paragraph does not extend to those suits, action, damages and costs of every name that arise out of this sole negligence of the STATE, or negligence of any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the contract work, or the negligence of any consultants working for the STATE, their agents or employees, relative to the construction, alteration, or repair or maintenance of a building, highway, or structure or appurtenances and appliances thereof including moving, demolition and excavating connected therewith. Notwithstanding the foregoing, the parties being defended by the CONSULTANT may elect to join any action or tender their own defense, at their sole expense and discretion.

## **ARTICLE 12 – INSURANCE**

The CONSULTANT shall procure, at its own sole cost an expense, and shall maintain in force at all times during the term of the CONTRACT including any extensions or renewals until satisfactory completion of all work under the CONTRACT, the policies of insurance covering all operations under the CONTRACT whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of (A-) or better or approved by the DEPARTMENT. The DEPARTMENT may, at its sole discretion permit the placement of policies with a non-authorized carrier or carriers upon request by the CONSULTANT accompanied by the documentation required by 11 NYCRR §20.7 et seq., provided that nothing herein shall be construed to require the DEPARTMENT to accept insurance placed with a non-authorized carrier under any circumstances. The CONSULTANT shall deliver to the DEPARTMENT evidence of such policies as the DEPARTMENT deems necessary to verify that the required insurance is in effect. If policies are changed or canceled, the CONSULTANT shall inform the STATE immediately. The STATE will determine whether to issue an order to the CONSULTANT to stop work.

1. Conditions Applicable to Insurance. All policies of insurance required by this CONTRACT must meet the following requirements:
  - A. Coverage Types and Policy Limits. The types of coverage and policy limits required from the CONSULTANT are specified in Section 2, Insurance Requirements, below. General Liability insurance shall apply separately on a per-job or per-project basis.
  - B. Policy Forms. Except as may otherwise specifically provided herein or agreed in writing by the DEPARTMENT, policies must be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at a minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy. Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f of the ISO-GLC policy) or that remove or modify the “insured contract” exception to the employer’s liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subconsultants, are not acceptable. Policy forms must be provided to the DEPARTMENT upon request.
  - C. Certificates of Insurance/Notices. CONSULTANT shall provide a Certificate or Certificates of Insurance in a form satisfactory to the COMMISSIONER, before commencing any work under this CONTRACT. Certificates or transmittal correspondence shall reference the NYSDOT CONTRACT Number. CONSULTANT is strongly encouraged to transmit certificates and other materials concerning insurance coverage, reference **Contract #C\_\_\_\_\_** and the name of the CONSULTANT in the Subject Line, by email to: Insur.consult.contr@dot.ny.gov.

New York State Department of Transportation  
Office of Contract Management  
50 Wolf Rd, 6<sup>th</sup> Floor  
Albany, NY 12232

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (a) canceled, (b) materially changed, or (c) permitted to expire or lapse for any reason except upon ten (10) calendar days prior written notice to the DEPARTMENT by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by the DEPARTMENT, the CONSULTANT shall deliver to the DEPARTMENT within ten (10) business days of such a request a copy of or any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

1. Be in a form satisfactory to the DEPARTMENT. The ACORD 25 Certificate must be accompanied by an ACORD 855 “New York Construction Addendum” completed to indicate information about the liability insurance.
2. Be signed and dated by an authorized representative of the insurance carrier or producer.
3. Disclose any deductible, self-insured retention, aggregate limit.
4. Refer to this CONTRACT by number on the face of the certificate.

If at any time during the term of this CONTRACT, it shall come to the attention of the DEPARTMENT that required insurance is not in effect or that adequate proof of insurance has not been provided, the DEPARTMENT may, at its option:

1. Direct the CONSULTANT to suspend work and not to re-enter the premises with no additional payment or extension of time due on account thereof, or
  2. May withhold further contract payments in accordance with Partial Payments, Section §109-04 of the Standard Specification, or
  3. Treat such failure as a breach or default of the CONTRACT.
- D. Additional Insureds. All insurance policies required by these specifications, except Workers' Compensation, NYS Disability and Professional Liability shall be endorsed to provide coverage to "The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees" with respect to any claim arising from the CONSULTANT'S activities. The endorsement shall be affected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 for a form(s) that provides equivalent coverage.
- E. Primary Coverage. The liability and protective liability insurance policies shall provide primary and non-contributory coverage to the DEPARTMENT for any claim arising from the CONSULTANT'S work under this CONTRACT, or as a result of the CONSULTANT'S activities.
- F. Waiver of Subrogation. As to every type and form of insurance coverage required from the CONSULTANT, there shall be no right of subrogation against the State of New York/New York State Department of Transportation, its agents or employees. To the extent that any of the CONSULTANT'S policies of insurance prohibit such a waiver of subrogation, CONSULTANT shall secure the necessary permission to make this waiver.
- G. Policy Renewal/Expiration. At least ten (10) calendar days prior to the expiration of any policy required by this CONTRACT, evidence of renewal or replacement policies of such insurance with terms no less favorable to the DEPARTMENT than the expiring policies shall be delivered to the DEPARTMENT in the manner required for service of notice in Section C – Certificates of Insurance/Notices above.
- H. Self-Insurance Retention/Deductibles. Consultants utilizing self-insurance programs are required to provide a description of the program for DEPARTMENT approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the CONTRACT documents of a particular project, the CONSULTANT or third-party administered insurance deductible shall be limited to the amount of the bid deposit of \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator or an approved risk management plan. The DEPARTMENT will not accept self-insured retention programs without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The CONSULTANT shall be solely responsible for all claim expenses and loss payments within any permitted deductible or self-insured retention. If the CONSULTANT'S deductible in a self-administered program exceeds the amount of the bid deposit, the CONSULTANT shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by the DEPARTMENT must be issued by a guarantor or surety with an A.M. Best Company rating of (A-) or better. If, at any time during the term of this CONTRACT, the DEPARTMENT, in its sole discretion, determines that the CONSULTANT is not paying its deductible, it may require the CONSULTANT to collateralize all or any part of the deductible or self-insured retention

or any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the CONSULTANT.

- I. Waiver of Indemnities. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the DEPARTMENT (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this CONTRACT. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the DEPARTMENT (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.
  - J. Subconsultant's Liability Insurance. In the event any portion of the work described in this CONTRACT is performed by an approved subconsultant, the insurance requirements of this Article shall be incorporated into the subcontract agreement. Subconsultant insurance requirements shall include the requirements for Workers' Compensation, NYS Disability Benefits, Commercial General Liability, and if applicable, Commercial Auto and/or Professional Liability. Excess or umbrella insurance is not required for subconsultants. CONSULTANT shall require that Certificates of Insurance, meeting the requirements of the DEPARTMENT are provided to the DEPARTMENT documenting the insurance coverage for each and every subconsultant employed by them to do work under this CONTRACT.
2. Insurance Requirements. The types of insurance and minimum policy limits shall be as follows:
    - a. Workers' Compensation and Disability Insurance. As required by State Finance Law Section 142, the CONSULTANT shall maintain in force Workers' Compensation insurance upon forms required by or acceptable to the Workers' Compensation Board for all of CONSULTANT's employees. CONSULTANT shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.
    - b. Commercial General Liability Insurance. The CONSULTANT shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including tort liability of another assumed in a business contract) occurring on or in any way related to the premises of occasioned by reason of the operations of CONSULTANT. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of no less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:
      - i. Coverage for contractual liability by the CONSULTANT insured under an insured contract (including the tort liability of another assumed in a business contract).
      - ii. All insurance policies required by these specifications except Workers' Compensation, NYS Disability Benefits, and Professional Liability shall be endorsed to provide coverage to "The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees" using ISO Form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.



- iii. Products – completed Operations Coverage, as provided in the General Liability Policy, or in certain instance through ISO Form CG 26 11 09 99 or suitable equivalent.
  - iv. Where contract work will be performed by unregistered off-road equipment, CONSULTANT shall provide documentation of a blanket Pollution Liability Policy, or an endorsement to cover short-term pollution events, ISO Form CG 04 33 10 01 or equivalent.
  - v. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
  - vi. Explosion, Collapse and Underground Hazards Coverage (“XCU”) for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment.
- c. Commercial Automobile Insurance including liability and required coverage for New York. In the event that automobiles are used in connection with CONSULTANT’S business or operations with the DEPARTMENT, the CONSULTANT shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of CONSULTANT’S automobiles (including owned, hired and non-owned vehicles) on and around the project. This may be ISO Form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than \$1,000,000 each accident.
  - d. Umbrella or Excess Liability Insurance. The CONSULTANT shall maintain an occurrence form umbrella liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent consultants, project-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of CONSULTANT or arising from automobile liability as described above. Such coverage shall be written on an ISO Occurrence Form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted. The minimum required limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than \$5,000,000 per occurrence/aggregate.
  - e. Consultant’s Risks. The CONSULTANT shall be responsible for obtaining any insurance it deems necessary to cover its own risks including without limitation: (1) business interpretation, such as gross earnings, extra expense, or similar coverage, (2) personal property, and/or (3) automobile physical damage and/or theft. In no event shall the DEPARTMENT be liable for any damage to, or loss, of personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this CONTRACT, even if such loss is caused by the negligence of the DEPARTMENT.

### **ARTICLE 13 – INTERCHANGE OF DATA**

All technical data in regard to the PROJECT existing in the office of the STATE or existing in the offices of the CONSULTANT shall be made available to the other party to this CONTRACT without expense to such other party.

### **ARTICLE 14 – DISPOSITION OF DATA**

At the time of completion of the work, the CONSULTANT shall make available to the STATE all documents and data pertaining to the work or to the PROJECT which materials at all times shall be the property of the STATE. It is agreed that the CONSULTANT may maintain copies of all documents and data. Or in the event that this CONTRACT is terminated for any reason, then, within ten (10) calendar days after such termination, the CONSULTANT shall make available to the STATE the aforementioned data and material.

#### **ARTICLE 15 – DAMAGES AND DELAYS**

The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this CONTRACT. Such delays or hindrances, if any, shall be compensated for by extension of time for such reasonable period as the STATE may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the STATE of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its right under ARTICLE 8 of this CONTRACT.

#### **ARTICLE 16 – NOTICE OF BANKRUPTCY, VENUE, AUDITS**

If, prior to final audit, CONSULTANT files for relief pursuant to Title 11 of the United States Code under Bankruptcy Laws or a successor statute, this CONTRACT shall be treated as an executory contract under 11 USC S365 of the Bankruptcy Laws or successor statute, and subject to assumption or reject by the debtor within the time permitted by law.

The CONSULTANT must immediately send written notice to the Office of Contract Management of the New York State Department of Transportation at its main office in Albany, NY and send all relevant pleading of the voluntary or involuntary filing of a Bankruptcy proceeding by the CONSULTANT, its subsidiary, its principals and officers or a related entity whether or not the CONSULTANT believes that any debt is owed to the STATE by final audit or otherwise.

The determination of any rights under this CONTRACT shall be adjudicated in a State or Federal Court with jurisdiction over the matter, and venue for the determination of such rights shall be in Albany, NY.

The CONSULTANT agrees that the automatic stay under 11 USC S362 or a successor statute shall be deemed inapplicable or that this agreement shall constitute consent to the lifting of the stay with respect to the State's performance of or completion of any audit pursuant to the terms of this CONTRACT.

#### **ARTICLE 17 – TERMINATION**

The STATE shall have the absolute right to terminate this CONTRACT, and such action shall in no event be deemed a breach of CONTRACT:

1. If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the actual work performed by the CONSULTANT prior to termination, including, but not limited to, the number of hours and other authorized costs audited in accordance with the terms of the CONTRACT.

2. If the termination is brought about as a result of the unsatisfactory performance on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the STATE.
3. The STATE reserves the right to terminate this CONTRACT in the event it is found that the certification filed by the CONSULTANT in accordance with the requirements contained in State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONSULTANT in accordance with the written notification terms of the CONTRACT.

## **ARTICLE 18 – DEATH OR DISABILITY OF THE CONSULTANT**

In the case of death or disability of one or more but not all persons herein referred to as the CONSULTANT, the rights and duties of the CONSULTANT shall devolve upon the survivors of the CONSULTANT, who shall be obligated to perform the services required under this CONTRACT, and the STATE shall make all payments due to them.

In case of the death or disability of all persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within sixty (60) calendar days to the STATE or their duly authorized representative. In case of the failure of the CONSULTANT's successors or personnel representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the state for any damages it may sustain by reason thereof. Upon the delivery of all such data to the STATE, the STATE will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of death of the last survivor.

## **ARTICLE 19 – INDEPENDENT CONTRACTOR**

The CONSULTANT, in accordance with their status as an independent contractor, covenants and agrees that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the STATE by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or Retirement membership or credit.

## **ARTICLE 20 – COVENANT AGAINST CONTINGENT FEES**

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that they have not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this CONTRACT. For breach or violation of this warranty, the STATE shall have the right to annul this CONTRACT without liability, or, in its discretion, to deduct from the CONTRACT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **ARTICLE 21– TRANSFER OF AGREEMENT**

The CONSULTANT specifically agrees, as required by State Finance Law, Section 138, that they are prohibited by law from assigning, transferring, conveying, subletting or otherwise disposing of the CONTRACT or of their right, title or interest therein, or their power to execute such CONTRACT, to any other person, company or corporation, without the previous consent in writing of the STATE.

If this provision of the law be violated, the STATE shall revoke and annul the CONTRACT and the STATE shall be relieved from any and all liability and obligations thereunder to the person, company or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet or otherwise dispose of the CONTRACT, except so much as may be required to pay his employees.

## **ARTICLE 22 – PROPRIETARY RIGHTS**

The CONSULTANT agrees that if copyrights, patentable discoveries or inventions or rights in data should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York an irrevocable, nonexclusive, nontransferable paid-up license to reproduce, publish, make, use, and sell each subject invention throughout the world and by and on behalf of the Government of the United States and States and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27, and other applicable Federal laws, rules and regulations.

## **ARTICLE 23 – SUBCONTRACTORS/SUBCONSULTANTS**

The CONSULTANT may arrange for a portion(s) of its responsibilities under this CONTRACT to be subcontracted to qualified, responsible subconsultants/subcontractors, subject to approval of the STATE. If the CONSULTANT determines to subcontract a portion of the services, the subconsultants/subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this CONTRACT must be fully explained by the CONSULTANT to the STATE. As part of this explanation, the subconsultant/subcontractor must submit to the STATE a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONSULTANT prior to execution of this CONTRACT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this CONTRACT including, but not limited to, the body of this CONTRACT, Appendix A – Standard Clauses for New York State Contracts, and the advertisement for Proposals. Unless waived in writing by the STATE, all subcontracts between the CONSULTANT and subconsultants/subcontractors shall expressly name the STATE, through the DEPARTMENT, as the sole intended third party beneficiary of such subcontract. The STATE reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the STATE a party to any subcontract or create any right, claim, or interest in the subconsultant/subcontractor or proposed subconsultant/subcontractor against the STATE.

The STATE reserves the right, at any time during the term of the CONTRACT, to verify that the written subcontract between the CONSULTANT and subconsultants/subcontractors is in compliance with all provisions of this Section and any subcontract provisions contained in this CONTRACT.

The CONSULTANT shall give the STATE immediate notice of writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subconsultant/subcontractor or which may affect the performance of the CONSULTANT's duties under the CONTRACT. Any subcontract shall not relieve the CONSULTANT in any way of any responsibility, duty, and/or obligation of the CONTRACT.

If at any time during the performance under this CONTRACT total compensation to a subconsultant/subcontractor exceeds or is expected to exceed \$100,000, that subconsultant/subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

#### **ARTICLE 24 – CERTIFICATION REQUIRED BY 49CFR, PART 29**

The signator to this CONTRACT, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company, partner, director, officer, or major stockholder (five percent or more ownership):

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
2. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past three (3) years;
3. Does not have a proposed debarment pending; and
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

EXCEPTIONS:

#### **ARTICLE 25 – CERTIFICATION FOR FEDERAL-AID CONTRACTS**

The prospective participant certifies, by signing this Contract, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by Section 1342, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4. The prospective participant also agrees by submitting his or her bid or Proposal that he or she shall require that the language of this certification shall be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

## **ARTICLE 26 – RESPONSIBILITY OF THE CONSULTANT**

The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CONSULTANT under this CONTRACT. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its services. However, the STATE may in certain circumstances, provide compensation for such work.

Neither the STATE's review, approval, or acceptance of, nor payment for, the services required under this CONTRACT shall be construed to operate as a waiver of any rights under this CONTRACT or of any case of action arising out of the performance of this CONTRACT, and the CONSULTANT shall be and remain liable to the STATE in accordance with applicable law for all damages to the STATE cause by the CONSULTANT's negligent performance or breach of contract of any of the services furnished under the CONTRACT.

The rights and remedies of the STATE provided for under this CONTRACT are in addition to any other rights and remedies provided by law.

If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint ventures associated for the purposes of undertaking this CONTRACT, each such entity acknowledges and hereby affirmatively represents and agrees that each has the power to bind the CONSULTANT and each of the others hereunder, and as such, each acts both as principals and agent of the CONSULTANT and of each of the others hereunder. Each further acknowledges and agrees that all such entities, partners or joint ventures associated for the purposes of undertaking this CONTRACT shall be jointly and severally liable to third parties, including, but not limited to the STATE, for acts or omissions of the CONSULTANT, or any other entity, partner or joint venture hereunder.

If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint ventures associated for the purposes of undertaking this CONTRACT, each such entity acknowledges and hereby affirmatively represents and agrees that the respective rights, duties and liabilities of each hereunder shall be governed by the laws of the State of New York, including, but not limited to the New York Partnership Law.

## **ARTICLE 27 – SECURITY AND CONFIDENTIALITY OF INFORMATION**

Information received as part of this CONTRACT shall be considered Confidential Information. The CONSULTANT warrants that it will take the appropriate steps as to its personnel, agents, officers, and any subcontractors/subconsultants regarding the obligations arising under this clause to insure such confidentiality. The CONSULTANT shall have written policies and/or business procedures in place which will protect Confidential Information from unauthorized disclosure, use, access, loss, alteration, or destruction. The CONSULTANT may disclose to other parties, as authorized by the NYSDOT Project Manager, or as described in the Lots, only the information necessary to perform services under this CONTRACT. However, the CONSULTANT shall in no circumstance, communicate with the public or news media without prior authorization from the State's designee. Neither shall the CONSULTANT disclose

information deemed confidential by the STATE nor shall the CONSULTANT disclose any other information obtained or developed in the performance of services under this CONTRACT without written authorization of the STATE. This warranty shall survive termination of this CONTRACT.

The CONSULTANT shall comply with the provisions of the New York State Information Security Breach and Notification Act, including General Business Law Section §89-aa and State Technology Law §208 as enacted by such Act or subsequently amended. In the event of an information security breach resulting in the unauthorized disclosure of personal information, the CONSULTANT shall be liable for the costs associated with such breach if caused by the CONSULTANT's negligence or willful acts or omissions, or the negligent or willful acts or omissions of the CONSULTANT's agents, officers, employees or subconsultants.

## **ARTICLE 28 – VENDOR RESPONSIBILITY**

The Department of Transportation has undertaken an affirmative review of the CONSULTANT's responsibility in accordance with the applicable standards outlined in Comptroller's "Guide to Financial Operations", and based upon such review, reasonable assurance that the CONSULTANT is responsible has been determined.

General Responsibility: The CONSULTANT shall, at all times during the CONTRACT, remain responsible. The CONSULTANT agrees, if requested by the Commissioner of NYSDOT (or his or her designee), to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organization and financial capacity.

Suspension of Work (for Non-Responsibility): The Commissioner of NYSDOT (or his or her designee) in his or her sole discretion, reserves the right to suspend any or all activities under this CONTRACT at any time when he or she discovers information that calls into question the responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension order. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. CONTRACT activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the CONTRACT.

Termination (for Non-Responsibility): Upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the CONTRACT may be terminated by the Commissioner of NYSDOT (or his or her designee) at the CONSULTANT's expense where the CONSULTANT is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue legal or equitable remedies for such breach.

## **ARTICLE 29 – NOTICES**

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
  - a. Via certified or registered United States mail, return receipt requested;
  - b. By facsimile transmission;
  - c. By personal delivery;
  - d. By expedited delivery service; or
  - e. By email.

Such notices shall be addressed as follows or to such difference addresses as the parties may time-to-time designate:

New York State Department of Transportation:

Contact Person's Name: Matt Bromirski, Contract #C [REDACTED]  
Title: Deputy Assistant Commissioner, Office of Contract Management  
Address: NYSDOT, Office of Contract Management, 50 Wolf Rd, 6<sup>th</sup> Floor,  
Albany, NY 12232  
Telephone Number: (518) 457-2600  
Facsimile Number: (518) 457-2875  
Email: [Matt.Bromirski@dot.ny.gov](mailto:Matt.Bromirski@dot.ny.gov)

New York Metropolitan Transportation Council:

Contact Person's Name: Seitu Allen, Contract #C [REDACTED]  
Title: Contracts Liaison  
Address: 25 Beaver St, Suite 201, New York, NY 10004  
Telephone Number: 212-383-1885  
Email: [Seitu.Allen@dot.ny.gov](mailto:Seitu.Allen@dot.ny.gov)

Consultant's Name: Enter Prime Consultant Name

Contact Person's Name:  
Title:  
Address:  
Telephone Number:  
Facsimile Number:  
Email:

2. Any such notice shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or certified registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
3. The parties may from time-to-time, specify any new or different address in the United States as their address for purpose of receiving notice under this CONTRACT by giving fifteen (15) calendar days' notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this CONTRACT.
4. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

## **ARTICLE 30 – TITLE VI ASSURANCE**

During the performance of this CONTRACT, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:

1. Compliance with Regulations: The CONSULTANT shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Regulations, Part 200 as they may be amended from time-to-time (hereinafter



referred to as the “Regulations”), which are herein incorporated by reference and made a part of this CONTRACT.

2. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the CONTRACT, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors/subconsultants, including procurements or materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, Section 21.5 of the Regulations, including employment practices when the CONTRACT covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontractor/Subconsultants, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor/subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT’s obligations under this CONTRACT and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
4. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to NYSDOT’s Office of Civil Rights or FHWA, as appropriate, and shall set forth the efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the CONSULTANT’s noncompliance with the nondiscrimination provisions of this CONTRACT, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the CONSULTANT under the CONTRACT until the CONSULTANT complies and/or
  - b. Cancellation, termination, or suspension of the CONTRACT in whole or in part.
6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANT shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interest of the United States.

## **ARTICLE 31 – CONSULTANT DISCLOSURE LEGISLATION**

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Exhibit A) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15<sup>th</sup> of each year the CONTRACT is in effect. The CONSULTANT shall provide information regarding all employees providing service under this CONTRACT, whether employed by the CONSULTANT or any subcontractor or

subconsultant. Form B will capture historical information, detailing actual employment data for the most recently completed State fiscal year (April 1<sup>st</sup> to March 31<sup>st</sup>). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the address:

By Mail:

NYS Office of the State Comptroller  
Bureau of Contracts  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236  
ATT: Consultant Reporting

NYS Department of Civil Service  
Alfred E. Smith Building  
Albany, NY 12239  
ATT: Chapter 10 Counsel's Office

By Email:

NYS Department of Transportation

Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel, or PDF file via email to: [consultantdisclosure@dot.ny.gov](mailto:consultantdisclosure@dot.ny.gov).

## **ARTICLE 32 – ENSURING PAY EQUITY BY STATE CONSULTANTS/ CONTRACTORS**

In accordance with Executive Order 162, issued on January 9, 2017, the CONSULTANT shall provide detailed workforce utilization reports of the CONSULTANT and each subconsultant/subcontractor that include, in addition to equal employment opportunity information, the job title and salary of each employee directly performing work on a STATE contract.

If the CONSULTANT cannot identify the individuals working directly on a STATE contract, then the CONSULTANT and each subconsultant/subcontractor shall provide such information of each employee in the CONSULTANT's entire workforce. Such information shall be reported to NYSDOT at quarterly intervals.

The reporting period shall be on a quarterly basis (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31). The reporting requirement shall begin on the effective date of the CONTRACT and continue for the duration of the CONTRACT term. Reports shall be submitted within 15 calendar days from the end of each reporting period.

Detailed workforce utilization reports, as required above, shall be submitted in such form and in such manner as shall be required by NYSDOT and as in accordance with Consultant Instruction 17-02.

The CONSULTANT shall include this provision in every subcontract so that such provisions shall be binding upon each subconsultant/subcontractor, of the subcontract is in excess of \$25,000.

## **ARTICLE 33 – CONFLICTS OF INTEREST**

The CONSULTANT has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONSULTANT's performance of the services does not and will not create a conflict of interest with, nor position the CONSULTANT to breach any other contract currently in force with the State of New York, that the CONSULTANT will not act in any manner that is detrimental to any STATE project on which the CONSULTANT is rendering services.

The CONSULTANT hereby affirms the attestations made in its Proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONSULTANT's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this CONTRACT. The CONSULTANT shall have a duty to notify the STATE immediately of any actual or potential conflicts of interest.

In conjunction with any subcontract under this CONTRACT, the CONSULTANT shall obtain and deliver to the STATE, prior to entering a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subconsultant/subcontractor. The CONSULTANT shall also require in any subcontracting agreement that the subconsultant/subcontractor, in conjunction with any further subconsulting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subconsultants/subcontractors prior to entering into a subcontract.

The STATE and the CONSULTANT recognize that conflicts may occur in the future because the CONSULTANT may have existing, or established new, relationships. The STATE will review the nature of any relationship and reserves the right to terminate this CONTRACT for any reason, or for cause, if, in the judgement of the STATE, a real or potential conflict of interest cannot be cured.

## **ARTICLE 34 – ETHICS REQUIREMENTS**

The CONSULTANT and its subconsultants/subcontractors shall not engage any person who is, or has been at any time, in the employ of the STATE to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of STATE employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively the "Ethics Requirements"). The CONSULTANT certifies that all of its employees and those of its subconsultants/subcontractors who are former employees of the STATE who are assigned to perform services under this CONTRACT shall be assigned in accordance with all Ethics Requirements. During the term, no person who is employed by the CONSULTANT or its subconsultants/subcontractors and who is disqualified from providing services under this CONTRACT pursuant to any Ethics Requirements may share in any net revenues of the CONSULTANT or its subconsultants/subcontractors derived from this CONTRACT. The CONSULTANT shall identify and provide the STATE with notice of those employees of the CONSULTANT and its subconsultants/subcontractors who are former employees of the STATE that will be assigned to perform services under this CONTRACT, and make sure that such employees comply with all applicable laws and prohibitions. The STATE may request that the CONSULTANT provide it with whatever information the STATE deems appropriate about each such person's engagement, work cooperatively with the STATE to solicit advice from the New

York State Joint Commission on Public Ethics, and, if deemed appropriate by the STATE, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The STATE shall have the right to withdraw or withhold approval of any subconsultant/subcontractor if utilizing such subconsultant/subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The STATE shall have the right to terminate this CONTRACT at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

**ARTICLE 35. IT PROJECT REQUIRMENTS. [Pertinent only to any new IT Project Development Work or any new IT application developed under this Agreement.]**

1. *Definitions.* As used in any of the documents forming this Agreement, the following terms shall have the following meanings (bold font added here only for emphasis):
  - "Consultant-Owned Software" and/or "Proprietary Software" means Software developed and owned by the Consultant or its subcontractors which either pre-exists, or whose development is not funded by this Agreement.
  - "Commissioner" means the Commissioner of Transportation of the State of New York or their duly authorized representative.
  - "Developed Software" means any and all Software and associated documentation that are specific to the Project Lots and Deliverables developed under this Agreement.
  - "Enhancement" shall mean any changes or additions to Software, other than Maintenance Releases, New Versions, or modifications, tailoring and/or customizations resulting from Integration Services that improve features or functions, add new features or functions, or improve performance.
  - "Equipment" for Commercial-Off-the-Shelf Software or Consultant-Owned Software, Equipment consists of any computer or computer system on which such software may be used pursuant to the relevant license; for Developed Software, Equipment consists of any computer or computer system.
  - "Error" shall mean any error, problem, or defect resulting from: (i) incorrect coding, or (ii) any failure of a deliverable to meet specifications.
  - "FHWA" means the Federal Highway Administration, an operating administration of the U.S. Department of Transportation.
  - "Licensed Software" means any Consultant-Owned Software and any Third-Party Software provided by the Consultant pursuant to this Agreement.
  - "Government" means the U.S. Government acting through FHWA.
  - "Integration Services" shall mean the programming and technical support provided by the Consultant to develop modifications to the Software, including services to tailor and customize Software to the Project, as such services may be set forth in the Lots.
  - "Intellectual Property" means all tangible and intangible property rights, including, but not limited to copyrights, patents, trademarks, trade secrets and any other form of intellectual property rights covering the source code, any databases, software, inventions, training manuals, content, menu structure, speech or sound files, vocabulary, HTML pages/code, graphics, data, look-and-feel, passwords, passwords, encryptions, phone numbers, domain names, systems design, formulas, methods, or other proprietary information in any form or medium..
  - "Maintenance Release" shall mean an error correction, maintenance or emergency release of Software, including any modifications or revisions to Software which correct errors in Software.

- "New Version" shall mean a new release of Software, other than Enhancements, Maintenance Releases or modifications, tailoring and/or customization resulting from Integration Services, or a new option not previously available which add to Software significant new features, functions or capabilities or significant improvements in performance. Such new Release/option shall be deemed a New Version rather than a Maintenance Release only if and so long as Consultant continues to maintain, enhance and market the Software without such new Release/option and generally charges its maintenance clients an additional charge.
- "Open Source Software" shall mean any software obtained under a license that permits unrestricted use, modification, and redistribution in modified or unmodified form. A subset of open source licenses also require that redistribution (in modified or unmodified form) be accompanied by corresponding source code. Any Open Source Software and the license applicable to it shall be subject to the State's review and approval prior to use.
- "Payment Schedule" means the items, amounts associated therewith and the compensation method and compensation schedule set forth in Schedule B.
- "Piggyback Contract" means a Contract let by any department, agency or instrumentality of the United States government, or any department, agency, authority, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.
- "Project" means the provision or development of testing, evaluation, deployment and support for any IT-related aspects of NYSDOT's ATDM Program, as more fully described in this Agreement's Lots.
- "Production System" means an automated application or process that is used by NYSDOT to conduct day-to-day business.
- "Lots" means Schedule A – Lot of this Agreement.
- "Software" means the computer programs (including any security devices) in object (and, in the case of Developed Software, also source code) form, in whole or part, provided by the Consultant under this Agreement, regardless of media type, including all or any portions of the Software incorporated in another program. Software shall, as appropriate, include Documentation and Maintenance Releases. This includes any software provided by NYSDOT for modification by the Consultant while under this Agreement per this Agreement's Lots.
- "Software Modification" shall mean any products resulting from Integration Services, modification, tailoring, and or customization of Software excluding Maintenance Releases, Enhancements or New Versions, performed to Software by or on behalf of the Consultant for the Project as set forth in the Lots.
- "Software Documentation" means the manuals, installation instructions and other materials which are provided with the Software whether in printed form or otherwise.
- "Subsystem" means an automated application or process that incorporates the capabilities, features, data and/or reporting required of a specific business function or process and that may or may not integrate with other subsystems to serve an enterprise need. For example: General Ledger, Purchasing, Accounts Payable, Accounts Receivable, Inventory Accounting, etc., are all subsystems of an enterprise Finance Information System.
- "System Documentation" means any manuals, reports, instructions and other materials for design specifications, programming specifications operating and maintenance instructions acquired or developed by the Consultant for the Project.

- "Support Services" shall mean the support services provided by the Consultant per the Project's Lots in respect to the Software and may include any support services provided in respect to Maintenance Releases, enhancements and/or new versions made to the Software.
  - "Third-Party Commercial-Off-The-Shelf Software" means Software that is ready-made and available for sale, lease, or license to the general public, with functionality and complexity defined by market need and which is not developed by the Consultant or its subcontractors for the Project, but which is acquired commercially and provided by the Consultant.
  - "Third-Party Software" means any Software provided by the Consultant as part of this Project which is not Consultant-Owned or Developed Software, including but not limited to, Third-Party Commercial-Off-The-Shelf software or Open Source Software.
  - "User Documentation" means manuals, instructions and other materials acquired, provided or developed by the Consultant for the Project per the Lots.
2. *IT Project Management.* Any IT Project or any IT application under this Agreement shall be performed under the direction and contract administration of NYSDOT and in accordance with the New York State IT Project Management Methodology, as defined in the New York State Project Management Guidebook.
  3. *Annual Maintenance & Support.* Annual costs for maintenance and optional maintenance renewals are calculated based on the number of such items called for under this Agreement and the applicable item-based pricing level thereunder, to be paid for according to the schedule set forth in Schedule B.
  4. *Third Party Claims.* If a third-party claim causes NYSDOT's quiet enjoyment and use of any ATMD Program IT project, aspect, functionality or component thereof (IT Project) to be seriously endangered or disrupted, and that claim is based on acts or omissions of the Consultant, its subcontractors, or the respective employees of agents of the aforesaid, the Consultant shall: 1) replace such IT Project, without additional charge, by a compatible, functionally equivalent and non-infringing product; 2) modify such IT Project to avoid the infringement; 3) obtain a license for NYSDOT to continue use of such IT Project for the term of this Agreement and pay for any additional reasonable fee required for such license; or, 4) if none of the foregoing alternatives are possible even after the Consultant's best efforts, the Consultant shall refund a pro rata portion of the entire license fee based on five years, according to the schedule set forth below, and discharge NYSDOT from its obligation to pay any further license or other fees under this Agreement.

Schedule of Refund	
Year 1	100%
Year 2	80%
Year 3	60%
Year 4	40%
Year 5	20%

5. *Disputed Work.* If Consultant is of the opinion that any work ordered by NYSDOT to be done as contract work is extra work and not contract work, or that any order of NYSDOT exceeds the work requirements of this Agreement, Consultant shall promptly, within ten (10) work days of receipt of the order or direction, so notify NYSDOT's Project Manager, in writing, explaining Consultant's contention. Consultant must progress the work as required and ordered. In the meantime, Consultant, if it considers the issue unresolved, shall promptly, within ten (10) work days of receipt of NYSDOT's written decision, notify the Commissioner, in writing with copies to the Project Manager, of its contentions relative to the dispute, indicating the substance of previous communication with the Project Manager on the issue and its rebuttal of the previous findings. The Commissioner or his/her designated representative shall make a finding thereon and notify Consultant of same in writing in a timely manner. If such work is determined by the Commissioner or his/her designee to be extra work pursuant to the provisions of this Article, NYSDOT will initiate a Supplemental Agreement. If the Commissioner or his/her designated representative determines that the work in question is contract work and not extra work, or that the order complained of is proper, he/she shall again direct Consultant to continue the disputed work, and Consultant must promptly comply. Consultant's right to pursue a dispute under this Article for extra compensation will not be affected in any way by Consultant's complying with the directions of the Commissioner or the Project Manager to proceed with the work, provided Consultant continues to keep and furnish documentation of the extra work claimed.
6. *Copyright and Patent Indemnity.* The Consultant shall defend, indemnify and shall hold harmless (including reasonable attorneys' fees) the State, NYSDOT, and any employee or agent thereof (each of the foregoing being hereinafter referred to as the "Indemnified Party") against all liability to third parties (other than liability solely the fault of the Indemnified Party) arising from or attributable to a breach of warranty, negligent or intentional act or omission of the Consultant, its subcontractors, or the respective employees or agents of the aforesaid, or the possession or use by NYSDOT, of the System, including (but not limited to) for the violation of any third party's trade secrets, proprietary information, trademark, copyright, or patent rights in connection with such System. A party requesting such indemnification shall give the Consultant prompt notice of such a claim. Consultant shall conduct the defense in any such third party action arising as described herein and NYSDOT shall fully cooperate with such defense. This indemnification is limited to the System including modifications thereto made by the Consultant or with the Consultant's knowledge and consent and does not cover third party claims arising from modifications not authorized by or performed with the knowledge of the Consultant or the use of the System in a combination or in a manner not specified by the Consultant. The provisions of this Article shall not impinge on the right of any of the State to pursue its own defense in any filed or threatened actions.
7. *Intellectual Property Rights to Licensed Software.* Intellectual property rights to Software other than that governed by Article 11 hereof are as follows:
  - a. *Third-Party Software.* Third-Party Software utilized under this project will be provided on a royalty-free basis to NYSDOT with, as applicable, such other license terms as negotiated between the Consultant and the third-party or for Commercial-Off-The-Shelf (COTS) software with such terms as provided under the relevant shrink-wrap license.
  - b. *Consultant-Owned Software.* This Software is provided by Consultant to NYSDOT, in accordance with the following terms:
    1. Consultant grants a royalty-free, perpetual, transferable, nonexclusive and irrevocable license for all Intellectual Property related to the Licensed Consultant-

- owned Software for authorized users of any IT Project software under NYSDOT's ATMD Program (including entities outside of NYSDOT).
2. Such Software licenses shall include in their meaning: 1) any Maintenance Releases, enhancements or New Versions of such Software developed by Consultant or its subcontractors during the term of this Agreement within the Lots or otherwise provided by Consultant or its subcontractors to any NYSDOT ATMD Program IT Project software and enhancements related thereto; and 2) all materials, including but not limited to training materials, documentation, and technical information provided to NYSDOT in written form and for use in connection with such Software.
  3. Consultant warrants that it has full power and authority to grant the rights granted by this subarticle to NYSDOT with respect to such Software without the consent of any other person and that neither the performance of services by Consultant nor the license to and use by NYSDOT of the Software, Software Modification, and Software documentation (including the copying and modifying thereof, exclusive of modifications not made by Consultant) will in any way constitute an infringement or violation of any copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, contract or any other rights of any third party.
  4. Consultant warrants such Software, Software Modification, its license as described herein, and the performance by Consultant of services, to be in compliance with all applicable laws, rules and regulations.
8. *Intellectual Property Developed Under This Agreement.* Rights to intellectual property developed under this Agreement shall be allocated and owned in accordance with the following:
- a. *Federal Law.* The applicable provisions of Federal Law and regulation provide for the non-Federal parties of an agreement to retain all intellectual property rights developed under this Agreement, subject further to the provisions defining, identifying, allocating, or restricting such rights otherwise set forth herein.
  - b. *Identification of Intellectual Property.* Consultant is responsible for identifying and segregating, in advance, intellectual property that was or will be developed by Consultant or its subcontractors under this Agreement, solely with non-federal funding.
  - c. *Trade Secrets.* The parties shall not publicly disclose information they obtain as a result of this Agreement where such information is marked and identified as proprietary or confidential, and which consists of information such as trade secrets or commercial or financial information that is privileged or confidential within the meaning of '552(b)(4) of Title 5, U.S.C.
  - d. *FHWA License.* Under the FHWA Grant Agreement, the FHWA has reserved a royalty-free, perpetual, transferable, nonexclusive, and irrevocable license to reproduce, publish, modify, or otherwise use in any media which exists currently or in the future, and to authorize others to use any such copyrightable work produced under this Agreement with Federal funds, for Federal Government purposes.
  - e. *Patents.* Rights to inventions made under this Agreement shall be determined in accordance with 37 C.F.R. Part 401. The standard patent rights clause at 37 C.F.R. Section 401.14, as modified below, is hereby incorporated by reference.
    - (i) The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from paragraph (g)(1) of the clause;



(ii) Paragraphs (g)(2) and (g)(3) of the clause shall be deleted; and

(iii) Paragraph (1) of the clause, entitled "Communications" shall read as follows:  
"(1) Communications. All notifications required by this clause shall be submitted to the FHWA Division Office."

- f. *Backups.* Consultant shall maintain weekly backups of source code developed, content, and files free from passwords, encryption, or malicious or time-triggered code, and make such backups available upon NYSDOT request.
9. *Escrow and Modification of Source Code.* Consultant shall place a copy of the source codes of any Consultant-Owned Software and any proprietary or custom-developed software (for any IT Projects under this Agreement) -- or subcontractor-Owned Software into escrow with a licensed escrow agent subject to approval by NYSDOT. NYSDOT approval shall not be unreasonably withheld.
10. *Delivery of Developed Software.* All source and object codes for the Developed Software, i.e., all software custom developed for any IT Project or any IT application under this Agreement, shall be provided to NYSDOT during System Implementation to support the maintenance of ATDM IT Project. This will include the software, documentation of the customization, and training materials for the maintenance of the customized software.
11. *Training, Support and Maintenance.* Consultant shall offer training in the use and implementation of any IT Project or any IT application under this Agreement and any COTS, Developed or Consultant-Owned Software, to NYSDOT staff, consultant, and other structure owners, including but not limited to municipalities, state and local authorities, commissions, and railroads that will be using any IT Project or any IT application under this Agreement, in accordance with the RFP and any other part of this Agreement.
- a. *Scope and Duration of Consultant Maintenance and Support of Proprietary, Developed, and/or Licensed Third-Party Software and Systems.* Following initial installation and implementation of the proprietary, developed, or licensed third-party software and related systems involved in the project underlying this Agreement, Consultant shall provide ongoing maintenance and support during the term of this Agreement for such software and systems. Consultant shall, at a minimum, provide NYSDOT with the same level of maintenance and support for Consultant's proprietary, developed, and/or licensed software that Consultant provides to other institutional clients and customers.
- b. *Terms and Conditions of Maintenance.* The maintenance to be provided by Consultant under Article 33.10(a) of this Agreement shall include, but not be limited to, providing new releases or updates if issued, and/or patches or bypasses, to address any known problem, i.e., any substantial deviation of unmodified software or systems from their then applicable specifications. Consultant shall provide access to the current version of such software and systems. Consultant's obligation to provide ongoing maintenance shall be limited to the then current version of such software and/or systems, and the immediately preceding version of same for a period of twelve (12) months after it is first superseded. Subject to such additional terms and conditions as may be set forth in Requirements of the RFP, and any other part of this Agreement, Consultant shall, at a minimum, provide NYSDOT with the same level of maintenance for Consultant's proprietary, developed, and/or licensed software that Consultant provides to other institutional clients and customers.
- c. *Scope and Duration of Consultant Support for NYSDOT Usage of Proprietary, Developed, and/or Licensed Third-Party Software.* The Consultant shall provide technical support during NYSDOT's installation and implementation of the

Developed or Consultant-Owned Software and Systems as set forth in Requirements of the RFP, and any other part of this Agreement. Following the initial installation and implementation of the proprietary, developed, or licensed third-party software and related systems involved in the project underlying this Agreement, Consultant shall provide ongoing technical support during the term of this Agreement for NYSDOT usage of such software and systems, which shall cover the software and systems, be of the scope and duration, include the types of support, and be conducted in accordance with the requirements set forth in Requirements of the RFP and any other part of this Agreement.

d. *Terms and Conditions of Support:*

1. Subject to such different or additional terms and conditions as may be set forth in Requirements of the RFP, and any other part of this Agreement, Consultant may be required, at a minimum, to provide support through a toll-free "800" telephone number connection to Consultant's technical support staff, and through an Internet website through which NYSDOT staff may contact Consultant's technical support staff, at least during the business hours of 7:30 am to 5:00 pm Eastern Standard Time, Monday through Friday, excluding state holidays, in order to present inquiries and/or requests for support and technical assistance, and to obtain such assistance.
2. In accordance with the provisions of the Requirements of the RFP, and any other part of this Agreement providing NYSDOT with access to the current version of the proprietary, developed, or licensed third-party software and related systems involved in the project underlying this Agreement, Consultant's obligation to provide ongoing support shall be limited to the then current version of such software and/or systems, and the immediately preceding version of same, for a period of twelve (12) months after it is first superseded.

12. *System Acceptance.* If NYSDOT determines that any IT Project or any IT application under this Agreement has not successfully completed the requirements of the system acceptance during the System Implementation Phase, NYSDOT shall promptly notify Consultant, in writing (hereinafter referred to as "notice of failure"), and shall specify with as much detail as possible in which respects the System does not perform properly. The Consultant shall respond within ten (10) business days with an action plan and schedule to address all issues related to the failure(s). NYSDOT may approve, require changes to, or reject the plan. If NYSDOT rejects the action plan provided by the Consultant in response to the notice of failure, NYSDOT may determine that such rejection means that the Consultant is in material default under this Agreement for the purposes of the default and termination provisions of this Agreement or may, at its sole discretion, afford the Consultant with additional opportunity to cure the default.

- a. *Repeated Failure Constituting Material Breach.* If the System fails to perform properly in accordance with the system acceptance for a second time, NYSDOT may determine that such failure constitutes a material default under this Agreement for the purposes of the default and termination provisions of this Agreement or may afford the Consultant with additional opportunity to cure the default.
- b. *Correction Costs.* The Consultant's correction of the product deficiency shall be at no additional cost to NYSDOT, unless the system acceptance failure(s) are the results of Disputed Work within the meaning of Article 33.5 of this Agreement (in which case the remedy within such section applies). The Consultant shall, however, bear sole responsibility for the costs of correction of product deficiencies revealed by such testing, including all previously unanticipated and unscheduled time and effort required for the development of corrective measures.

13. *Warranty Provisions.* Consultant warrants that, for 18 months from the acceptance of any IT Project or any IT application under this Agreement per the successful completion of the system acceptance, any IT Project or any IT application Software and Systems created under this Agreement, including all Service Components, Developed Software, and Consultant-Owned Software furnished hereunder, shall be free from significant programming and operational errors which shall prevent it from operating in conformity with the standards set forth in this Agreement.
- a. If NYSDOT notifies Consultant that any Software, System, or Service fails to conform to the requirements of this agreement during the Warranty period, Consultant shall remedy such failure at no cost to NYSDOT.
  - b. *Exclusive Warranty for Third-Party Software.* Consultant's warranties do not apply to Third-Party Software or Third-Party Commercial-Off-The-Shelf Software. Third-Party Software or Third-Party Commercial-Off-The-Shelf Software manufacturer and any Third-Party warranties shall, to the extent permissible, be passed through to NYSDOT. However, Consultant shall provide a work-around solution to any Third-Party Software, to allow the system to function to the highest extent reasonably possible within a reasonable time frame.
  - c. *Correction of Defects.* If at any time during the Warranty Period Consultant or NYSDOT discovers one or more defects or errors in any IT Project or any IT software or systems application developed under this Agreement or any other respect in which such Software and Systems fail to conform to the provision of any warranty contained in the Agreement, Consultant shall, entirely at its own expense, correct such defect, error, or non-conformity by, among other things, supplying NYSDOT with such corrective codes and making such additions, modifications, or adjustments to the Software as may be necessary to keep all Software in operating order.
  - d. *Warranty Disclaimer.* Consultant disclaims any and all other promises, representations, or warranties not expressly provided for elsewhere in this Agreement, and its attachments and exhibits, to the maximum extent allowable by law, with respect to the software and systems, either express or implied, including but not limited to the implied warranties of merchantability and fitness for a specific purpose, and any warranties that the operation of any IT Project or any IT software or system application developed under this Agreement will be uninterrupted or error free.

14. *Suspension and Termination; Bankruptcy.*

14.1 *Suspension or Termination for Convenience of NYSDOT.* NYSDOT may, without cause and for its convenience, upon not less than seven (7) days' written notice to Consultant, suspend Consultant's performance under this Agreement or terminate this Agreement.

14.1.1 Contracts between Consultant and its subconsultants shall provide for their suspension or termination, without cause and for the convenience of Consultant, upon not less than seven (7) days' written notice by Consultant to its contractor, and for closeout compensation in such event for work in progress and materials on order prior to termination, work performed, materials delivered, but not lost profit on the balance of contract work. NYSDOT may, without cause and for its convenience, upon not less than seven (7) days' written notice to Consultant, require Consultant to suspend or terminate any or all of its contracts pursuant to such provisions.

14.2 *Suspension or Termination for Cause.* NYSDOT may for cause and, unless in NYSDOT's judgment the public interest requires earlier action, upon not less than seven (7) days' written notice to Consultant, suspend Consultant's performance under this Agreement or terminate this

Agreement if Consultant breaches or is in default of any obligation hereunder, including those instances enumerated in the Escrow Agreement, which default is incapable of cure or which, being capable of cure, has not been cured within twenty (20) days after receipt of notice of such default from NYSDOT or within such additional cure period as NYSDOT may authorize.

Consultant shall also be deemed in default if: 1) it fails to make reasonable progress as defined by NYSDOT on any IT Project or any IT application under this Agreement in accordance with this Agreement; 2) any IT Project or any IT application under this Agreement does not perform in accordance with the requirements of this Agreement, notwithstanding Consultant's remedial or maintenance efforts; or 3) other material violation of this Agreement that significantly endangers substantial performance of any IT Project or any IT application under this Agreement.

14.2.1 In the event of the termination of this Agreement for failure of any IT Project or any IT application under this Agreement element or component, or in the performance of any IT Project or any IT application under this Agreement during the Warranty Period as stated in Article 33.13(a) of this Agreement, NYSDOT may: 1) recover from Consultant all costs, fees, and expenses incurred by NYSDOT to remedy such failure, including for elements which are rendered substantially useless as a result of such failure, up to the amount paid to Consultant for the Project element that has so failed; and 2) if such failure is integral to any IT Project or any IT application under this Agreement, all money paid for any IT Project or any IT application under this Agreement, as well as associated services.

14.2.2 In the event of the failure of any IT Project or any IT application, element or component under this Agreement, or in the performance of any IT Project or any IT application, software, systems or services provided under this Agreement during the Warranty Period as stated in Article 33.13(a) of this Agreement, NYSDOT may suspend Consultant's performance, in whole or in part, without terminating this Agreement, and contractually or otherwise remedy the failure at costs to be charged to Consultant or offset against Consultant's compensation under this Agreement. In the event of such suspension or other remedy, Consultant's aggregate liability shall not exceed two hundred percent (200%) of the amount stated in 14.2.1 above.

14.2.3 If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of the Consultant, final payment shall be made based on the percentage of work satisfactorily completed by the Consultant, as determined by the STATE.

14.2.4 The New York State Department of Transportation reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with the requirements contained in State Finance Law Sections 139j & 139k was intentionally false or intentionally incomplete. Upon such finding, the New York State Department of Transportation may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

14.3 *Delivery of Documentation.* In the event of suspension or termination pursuant to this Article, Consultant shall secure for and deliver to NYSDOT all documentation relating to the contracts terminated thereby, including but not limited to any designs, plans or specifications, contract and subcontract documents, tapes or discs, or software.

14.4 *Impact on Project Schedule.* In the event such suspension or termination affects project duration, the impact will be reflected in the project schedule.

14.5 *Suspension or Termination Payments.* In general, suspension of performance or termination of any financial assistance under this Agreement will not invalidate the State's obligation to

reimburse Consultant for costs and expenses properly incurred by Consultant and concurred in by the State before the suspension or termination date, to the extent those obligations cannot be canceled. However, if the State determines that Consultant has willfully misused State or Federal assistance funds by the gross negligence or willful failure to make adequate progress; make reasonable use of the Project property, facilities, or equipment; or adhere to the terms of this Agreement, the State reserves the right to require Consultant to refund the entire amount of State funding received by Consultant under this Agreement.

14.6. *Bankruptcy.* Should a petition for bankruptcy be filed by Consultant pursuant to Title 11 USC or its successor statute:

14.6.1 Consultant shall comply with all requirements set forth in 11 USC 365 or any successor statute regarding the assumption, assignment, or rejection of this Agreement. Consultant shall either cure all defaults, compensate actual losses, give adequate assurance of future performance and fulfill all obligations pursuant to 11 USC 365(b)(1) or other applicable law and assume the obligation; or shall reject this Agreement as provided by Bankruptcy Law. If this Agreement is rejected, possession of or rights to contract property, including subcontracts required for the performance of the Project (which is in the public interest), equipment, and deliverables, shall be immediately returned to or transferred and assigned to the State. No sale or assignment of this Agreement shall be permitted without the consent of the State or without compliance with the assumption and assignment provisions under Bankruptcy Law pursuant to 11 USC 365 or its successor statute.

14.6.2 The Debtor may not assume or assign this Agreement if it has been terminated pursuant to the terms hereof prior to the filing for a petition for relief in bankruptcy.

14.7 *Reserved.*

14.8 *Consultant Warranties Surviving Suspension, Termination, or Bankruptcy.* Following a suspension or termination of this Agreement, and/or a Chapter 11 reorganization bankruptcy of Consultant, Consultant's obligations to have provided properly performing software and/or systems as required under this Agreement, and the warranties provided by Consultant to NYSDOT under this Agreement, shall continue in effect for the remainder of the term of this Agreement, without regard to such suspension or termination, and to the fullest extent allowed by federal bankruptcy statutes and case law. Consultant shall not avoid responsibility for failure to provide properly performing software and/or systems as required under this Agreement by asserting that the suspension or termination of this Agreement, or Consultant's Chapter 11 bankruptcy, has voided the obligations of Consultant's contractual warranties under this Agreement.

14.9 *Limitation of Liability/Exclusion of Damages.* Except for Licensee's breach of confidentiality obligations hereunder, in no event shall either party be liable to the other for any incidental, indirect, special, consequential or punitive damages related to the software that is not expressly provided for elsewhere in this Agreement and its attachments and exhibits, including without limitation lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation, or liabilities to third parties arising from the software's use, even if the party from which such damages are sought has been advised of the possibility of such damages.

**IN WITNESS WHEREOF**, this CONTRACT No. \_\_\_\_\_ has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT, by signature below, has duly executed this CONTRACT effective the date and year first above written.

In addition to the acceptance of this CONTRACT, the DEPARTMENT certifies that original copies of this signature page will be attached to all other exact copies of this CONTRACT.

RECOMMENDED BY: \_\_\_\_\_ FOR THE PEOPLE OF THE STATE OF NEW YORK

\_\_\_\_\_ By: \_\_\_\_\_

Office of Contract Management Department of Transportation

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Consultant Certifications: I certify that all information with respect to the "Vendor Responsibility Questionnaire" submitted by (Consultant Firm Name) on \_\_\_\_ day of \_\_\_\_\_, 20\_\_ pursuant to the requirements set forth in OSC's Guide to Financial Operations is complete, true, and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the "Vendor Responsibility Questionnaire" submitted that date.

In addition to the acceptance of this CONTRACT, I certify that all information provided to the STATE with respect to the requirements contained in State Finance Law Section §139-j & §139-k is complete, true, and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
FIRM NAME

Consultant Planning Service Agreement (PSA5) for NYMTC

ATTORNEY GENERAL

THOMAS P. DINAPOLI  
STATE COMPTROLLER

By: \_\_\_\_\_ By: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**Acknowledgment for Contract #C\_\_\_\_\_**

For contracts signed in New York State

State of New York            )

County of                        ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me the undersigned personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

My Commission Expires:

For contracts signed outside of New York State

State of                                )

County of                                ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual(s) made such appearance before the undersigned in

\_\_\_\_\_ (insert the city or other political subdivision and the state or county or other place the acknowledgment was taken).

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Signature and office of individual taking acknowledgment)

My Commission Expires: \_\_\_\_\_

## APPENDIX A

### STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.



6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid Proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid Proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

**OCTOBER 2019**

## APPENDIX A-1

### SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **APPENDIX B**

### **REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS**

*(June 2016)*

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its Procedures for Locally Administered Federal-Aid Projects Manual (available through NYSDOT's web site at: <http://www.dot.ny.gov/plafap>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: <http://www.fhwa.dot.gov/programadmin/contracts/1273.htm>).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

#### **NON DISCRIMINATION/EEO/DBE REQUIREMENTS**

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION.** No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with the execution of this Agreement, the Municipality/Sponsors contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
3. **DISADVANTAGED BUSINESS ENTERPRISES.** In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under [18 U.S.C. 1001](#) and/or the Program Fraud Civil Remedies Act of 1986 ([31 U.S.C. 3801](#) et seq.).



## **FEDERAL SINGLE AUDIT REQUIREMENTS**

Non-Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency<sup>1</sup> the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

## **THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE**

The Catalog of Federal Domestic Assistance ([CFDA](#)<sup>2</sup>), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

## **THE CFDA IDENTIFICATION NUMBER**

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

**The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.**

**Additional CFDA numbers for other transportation and non-transportation related programs are:**

**20.215 Highway Training and Education**  
**20.219 Recreational Trails Program**  
**20.XXX Highway Planning and Construction - Highways for LIFE;**  
**20.XXX Surface Transportation Research and Development;**  
**20.500 Federal Transit-Capital Investment Grants**  
**20.505 Federal Transit-Metropolitan Planning Grants**  
**20.507 Federal Transit-Formula Grants**  
**20.509 Formula Grants for Other Than Urbanized Areas**  
**20.600 State and Community Highway Safety**  
**23.003 Appalachian Development Highway System**  
**23.008 Appalachian Local Access Roads**

## **PROMPT PAYMENT MECHANISMS**

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

- (1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
- (2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.
- (3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract

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<sup>1</sup> The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

<sup>2</sup> <http://www.cfda.gov/>



clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

### **CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS**

In accordance with 46 CFR 381, the contractor agrees:

- (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (c) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

## **APPENDIX C**

### **SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS**

#### Specific Equal Employment Opportunity Responsibilities

**1. GENERAL** (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive, NYS Executive Law Article 15, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, by Executive Order 162, issued on January 9, 2017 and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

(b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of \$10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.

(d) The CONSULTANT and all their sub-consultants and/or subcontractors shall comply with Executive Order 162, issued on January 9, 2017, requiring quarterly workforce utilization reports, detailing reports of the Consultant and all of their subconsultants, which includes in addition to equal opportunity information, the job and salary of each employee directly performing work on a State contract.

#### **2. EQUAL EMPLOYMENT OPPORTUNITY POLICY**

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the contract.
- B. In performing the contract, the Consultant shall:
  - 1. Ensure that each Consultant and subconsultant – or subcontractor – performing work on the contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - 2. The Consultant shall submit an EEO policy statement to the New York State Department of Transportation (NYSDOT) after the date of the notice by the NYSDOT to award the contract to the Consultant as determined by the Department.
  - 3. If the Consultant or any of its subconsultants, does not have an existing EEO policy statement, the NYSDOT may require the Consultant or subconsultant to adopt a model statement consistent with item B.4.a through d of this section.
  - 4. The Consultant's EEO policy statement shall include the following language:
    - a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce.
    - b. The Consultant shall state in all solicitations or advertisements for employees that in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, natural origin, sex, age, disability or marital status.
    - c. The Consultant shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperation the implementation of the Consultant's obligation herein.
    - d. The Consultant will include provisions of Subdivisions (a) through (c) of this subsection 4 and the paragraph appearing immediately below which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant as to work in connection with the contract.
    - e. The Consultant shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Consultant and its subconsultants shall not

discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction or prior arrest.

**3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER** The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.

**4. DISSEMINATION OF POLICY** (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

- (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- (2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.
- (3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)

(b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

- (1) Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- (2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.

**5. RECRUITMENT** (a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration. In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.

(c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

**6. PERSONNEL ACTIONS** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken

without regard to race, color, religion, sex, national origin, age, disability or marital status. The following procedures shall be followed:

(a) The CONSULTANT will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The CONSULTANT will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory practices.

(c) The CONSULTANT will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONSULTANT will promptly take corrective action. If the review indicated that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

**7. TRAINING AND PROMOTION** (a) The CONSULTANT will assist in locating, qualifying and increasing the skills of minority group and women employees, and applicants for employment.

(b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.

(c) The CONSULTANT will advise employees and applicants for employment of available training programs and entrance requirements for each.

(d) The CONSULTANT will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**8. UNIONS** If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT's compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:

(a) The CONSULTANT will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

(b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.

(c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

(d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts,

fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.

**9. AFFIRMATIVE ACTION IN SUBCONTRACTING** (a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit Proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).

(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time of submittal of a formal Proposal to the State's Contracts Bureau.

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting Proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.

(e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

**10. RECORDS AND REPORTS** (a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:

- (1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.
- (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
- (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- (5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

(c) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:

- (1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
- (2) cancellation, termination or suspensions of the agreement in whole or in part.

**11. TRAINING SPECIAL PROVISIONS** This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

The number of months of training to be provided under these special provisions is previously stated in the Agreement.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their Proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less than 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

**Updated July 2017**

## **APPENDIX D**

### **INFORMATION TECHNOLOGY INFRASTRUCTURE REQUIREMENTS**

#### **1. PROTECTION OF DATA , INFRASTRUCTURE AND SOFTWARE**

1.1 Consultant is responsible for providing physical and logical security for all Data, infrastructure (e.g., hardware, networking components, physical devices), and software related to the services the Consultant is providing under this Agreement.

1.2 All Data security provisions agreed to by the Consultant within this Agreement may not be diminished for the duration of this Agreement. No reduction in these conditions in any fashion may occur at any time without prior written agreement by the parties amending this Agreement.

#### **2. SECURITY POLICIES AND NOTIFICATIONS**

2.1 State Security Policies and Procedures: The Consultant and its personnel shall review and implement all State security policies, procedures and directives currently existing or implemented during the term of this Agreement, including ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)) .

2.2 Security Incidents: Consultant shall address any Security Incidents in the manner prescribed in ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)), including the New York State Cyber Incident Reporting Procedures incorporated therein or in such successor policy(ies) .

#### **3. DATA BREACH - REQUIRED CONSULTANT ACTIONS**

3.1 Unless otherwise provided by law, in the event of a Data Breach, the Consultant shall:

3.1.1 notify the NYSDOT Project Coordinator or their designated contact person(s), by telephone as soon as possible, but in no event more than four (4) hours from the time the Consultant has knowledge of a Data Breach;

3.1.2 consult with and receive authorization from the NYSDOT Project Coordinator as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by NYSDOT;

3.1.3 coordinate all communication regarding the Data Breach with the NYSDOT Project Coordinator

3.1.4 cooperate with the NYSDOT Project Coordinator in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and

3.1.5 take corrective action in the timeframe required by the NYSDOT Project Coordinator. If Consultant is unable complete the corrective action within the required timeframe, the NYSDOT Project Coordinator may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to NYSDOT, or until NYSDOT has completed a new procurement for a replacement service system . The Consultant will be responsible for the cost of these services during this period.

3.2 Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General (“OAG”) to bring an action against Consultant to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Consultant's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

#### 4. DATA OWNERSHIP, ACCESS AND LOCATION

4.1 Data Ownership: NYSDOT shall own all right, title and interest in Data.

4.2 Access to Data:

4.2.1 NYSDOT shall have access to its Data at all times, through the term of the Agreement.

4.2.2 NYSDOT shall have the ability to import or export Data in piecemeal or in its entirety at NYSDOT’s discretion, without interference from the Consultant.

4.3 Consultant Access to Data: The Consultant shall not copy or transfer Data unless authorized by NYSDOT. In such an event the Data shall be copied and/or transferred in accordance with the provisions of this Section. Consultant shall not access any Data for any purpose other than fulfilling the service. Consultant is prohibited from Data Mining, cross tabulating, monitoring NYSDOT’s Data usage and/or access, or performing any other Data Analytics other than those required within the Contract. At no time shall any Data or processes (e.g., workflow , applications, etc.), which either are owned or used by NYSDOT be copied, disclosed , or retained by the Consultant or any party related to the Consultant. The Consultant is allowed to perform industry standard back-ups of Data. Documentation of back-up must be provided to NYSDOT upon request. Consultant must comply with any and all security requirements within the Contract.

4.4 Data Location and Related Restrictions: All Data shall remain within the Continental United States (CONUS). Any Data stored, or acted upon, must be located solely in Data Centers in CONUS. Services which directly or indirectly access Data may only be performed from locations within CONUS. All Data in transit must be handled in accordance with FIPS- 140-2 or TLS1, or TLS2 (or successor).

4.4.1 Support Services: All helpdesk, online, and support services which access any Data must be performed from within CONUS. At no time will any Follow the Sun support be allowed to access Data directly, or indirectly, from outside CONUS.

#### 5. CONSULTANT PORTABLE DEVICES

5.1 Consultant shall not place Data on any portable Device unless Device is located and remains within Consultant's CONUS Data Center.

5.2 The Data, and/or the storage medium containing the Data, shall be destroyed in accordance with applicable ITS destruction policies (ITS Policy S13-003 Sanitization/Secure Disposal and S14-003 Information Security Controls or successor) when the Consultant is no longer contractually required to store the Data.

#### 6. TRANSFERRING OF DATA



6.1 General: The Consultant will not transfer Data unless directed to do so in writing by NYSDOT.

6.2 Transfer of Data at end of the Agreement: At the end of the Agreement, Consultant may be required to transfer Data to a new Consultant. This transfer must be carried out as specified by NYSDOT in the Agreement. This transfer may include, but is not limited to, conversion of all Data into or from an industry standard format(s) including comma/delimited files, txt files, or Microsoft standard file formats.

6.3 Transfer of Data; Charges: Transfer of Data shall be done at no additional charge to NYSDOT.

6.4 Transfer of Data; Contract Breach or Termination: In the case of Contract breach or termination for cause of the Contract, all expenses for the transfer of Data shall be the responsibility of the Consultant.

## 7. ENCRYPTION

7.1 All Data must be encrypted at all times unless specifically authorized by the NYSDOT Project Coordinator. At a minimum, encryption must be carried out at the most current NYS Encryption Standard (NYS-S14-007), (or successor policy(ies) with key access restricted to NYSDOT only, unless with the express written permission of NYSDOT.

## 8. REQUESTS FOR DATA BY THIRD PARTIES

8.1 Unless prohibited by law, Consultant shall notify the NYSDOT Project Coordinator in writing within 24 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than NYSDOT, and the Consultant shall secure Written acknowledgement of such notification from the NYSDOT Project Coordinator before responding to the request for Data.

8.2 Unless compelled by law, the Consultant shall not release Data without NYSDOT's prior written approval.

## 9. SECURITY PROCESSES

9.1 Consultant shall cooperate with all reasonable NYSDOT requests for a written description of Consultant's physical/virtual security and/or internal control processes. NYSDOT shall have the right to terminate this Agreement when such a request has been denied.

## 10. UPGRADES, SYSTEM CHANGES AND MAINTENANCE/SUPPORT

10.1 The Consultant shall give a minimum of five (5) business days advance written notice to the designated NYSDOT Project Coordinator of any upgrades or system changes that will impact services as provided in this Agreement.

## 11. EXPIRATION , TERMINATION OR SUSPENSION OF SERVICES

11.1 Return of Data: The Consultant shall return Data in a format agreed upon within the Contract or as agreed to with the NYSDOT Project Coordinator. The Consultant must certify all

Data has been removed from its system and removed from backups within timeframes established in the Contract or as agreed to with the NYSDOT Project Coordinator.

11.2 Suspension of Services: During any period of suspension of service, NYSDOT shall have full access to all Data at no charge. The Consultant shall not take any action to erase and/or withhold any NYSDOT Data, except as directed by the NYSDOT Project Coordinator.

11.3 Expiration or Termination of Services: Upon expiration or termination of the Agreement, NYSDOT shall have full access to all Data for a period of 60 calendar days at no charge. During this period, the Consultant shall not take any action to erase and/or withhold any Data, except as directed by the NYSDOT Project Coordinator.

## 12. SECURE DATA DISPOSAL

12.1 When requested by the NYSDOT Project Coordinator, the Consultant shall destroy Data in all of its forms, including all back-ups. Data shall be permanently deleted and shall not be recoverable, according to ITS Policy S13-003 Sanitization/Secure Disposal or successor and S14-003 Information Security Controls or successor. Certificates of Destruction, in a form acceptable to NYSDOT, shall be provided by the Consultant to the NYSDOT Project Coordinator.

## 13. ACCESS TO SECURITY LOGS AND REPORTS

13.1 Upon request, the Consultant shall provide reports to NYSDOT in a format as specified in the Contract.

## 14. CONSULTANT PERFORMANCE AUDIT

14.1 The Consultant shall allow NYSDOT to assess Consultant's performance by providing any materials requested in the Contract (e.g., page load times, response times, uptime, fail over time). NYSDOT may perform this Consultant performance audit with a third party at its discretion.

14.2 The Consultant shall perform an independent audit of their Data Centers, at least annually, at Consultant expense. The Consultant will provide a full version of the audit report upon request by NYSDOT. The Consultant shall identify any confidential, trade secret, or proprietary information in accordance with Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law.

14.3 The Office of the State Comptroller reserves its right to conduct an audit of the Consultant.

## 15. PERSONNEL

15.1 Background Checks: NYSDOT may require the Consultant to conduct background checks on certain Consultant staff at no charge to NYSDOT.

15.2 Separation of Duties: NYSDOT may require the separation of job duties, and limit staff knowledge of Data to that which is absolutely needed to perform job duties.

## 16. BUSINESS CONTINUITY/DISASTER RECOVERY (BC/DR) OPERATIONS

16.1 The Consultant shall provide a business continuity and disaster recovery plan to the NYSDOT Project Coordinator within 30 days of receiving the Notice to Proceed.

## 17. COMPLIANCE WITH FEDERAL, STATE AND LOCAL REGULATIONS

17.1 If required, Consultant will provide verification of compliance with specific Federal, State and local regulations, laws and IT standards that NYSDOT is required to comply with.

## 18. AUTHENTICATION TOKENS

18.1 NYSDOT may require authentication tokens for all systems. For more details, please see NYS ITS Policy S14-006 Authentication Tokens Standard or successor.

## 19. MODIFICATION TO CLOUD SERVICE DELIVERY TYPE AND DESCRIPTION WITHIN AN AUTHORIZED USER AGREEMENT

19.1 As Cloud services can be flexible and dynamic, delivery mechanisms may be subject to change. NYSDOT requires notification of any such changes to ensure security and business needs are met.

19.2 Any changes to the description, type of service(s), or SKU (e.g., PaaS to IaaS) must be provided to NYSDOT.

19.3 In addition, notification must be provided to the NYSDOT Project Coordinator for review and acceptance, prior to implementation. Any changes to the Agreement will require NYSDOT to re-assess the risk mitigation methodologies and strategies and revise the Agreement as needed.

December 2015

## 8.2 Attachment 2. Executive Order 177 Certification

### RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC

This Certification must be completed and returned with the executed contract documents.

#### Executive Order 177 Certification

Contract #C\_\_\_\_\_

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment; employers with fewer than four employees in all cases involving sexual harassment; and, any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Proposer/Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Vendor: \_\_\_\_\_

By [signature]: \_\_\_\_\_

Name [print]: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ , 20\_\_

### 8.3 Attachment 3: Form OAR

## ACKNOWLEDGMENT OF RECEIPT OF RFP, MODIFICATIONS AND RESPONSES TO QUESTIONS

NAME OF PROPOSER:

We hereby acknowledge receipt of the Request for Proposals #PSA5: '*CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC*', dated **December 6, 2021** and all subsequent RFP Modifications issued by NYSDOT, as listed below. Do not include any RFP Announcements.

Add additional lines below, if needed.

RFP MODIFICATION NUMBER:	DATE ISSUED BY DEPARTMENT:

SIGNED: \_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

NAME: \_\_\_\_\_  
(Print name)

TITLE: \_\_\_\_\_

#### **8.4 Attachment 4. Procurement Lobbying Law Compliance Forms**

##### **Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)**

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contracts as required by State Finance Laws §139-j (3) and §139-j (6) (b).

##### **RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Consultant Name: \_\_\_\_\_

Consultant Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

Contract Procurement Number: **RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC**

Date: \_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle): No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle): No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity:

Date of Finding of Non-responsibility:

Basis of Finding of Non-responsibility:

(Add additional pages as necessary.)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

(Please circle): No Yes

If yes, please provide details below.

Governmental Entity:

Date of Finding of Non-responsibility:

Basis of Finding of Non-responsibility:

(Add additional pages as necessary.)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By:

Signature

Date:

Name:

Title:

## Attachment 4 (Continued)

### Procurement Lobbying Law Compliance Form Information

**Required Forms:** The consultant shall sign and e-mail/fax the two PLL forms listed below. These forms are part of and due with a submitted Proposal.

1. **Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)**
2. **Offerer Disclosure of Prior Non-Responsibility Determinations**

**NYSDOT Guidelines and Procedures:** Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through NYSDOT Contract Management. Until a designation is made, communication with any other NYSDOT employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.

Refer to "NYSDOT PROCUREMENT LOBBYING LAW GUIDELINES AND PROCEDURES" – see the Consultant's page at NYSDOT's "Doing Business With DOT" web site: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions> then scroll down to 'Compliance Procurement Lobbying Law'.

**Contacts Prior to Designation:** Any communications involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons:

1. The Designated NYSDOT Contract Management Specialist
2. The Designated NYMTC Contact Person
3. The NYSDOT Contract Management Specialist's Supervisor
4. A NYSDOT Contract Management Assistant Director
5. The NYSDOT Director of Contract Management

These are some communications exempted from this restriction:

1. Participation in a pre-Proposal conference/webinar
2. Submittal of written questions when written responses will be provided to all offerers
3. Protests, complaints of improper conduct or misrepresentation

If any other NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee. If the Department determines an impermissible contact was made, that offerer cannot be awarded the contract. A second violation would lead to a four-year bar on the award of public contracts to the offerer.

**Contacts After Designation:** NYSDOT identifies its primary negotiation contacts. The designated contacts include:

1. The Designated NYSDOT Contract Management Specialist
2. The Designated NYMTC Contact Person
3. The NYSDOT Contract Management Specialist's Supervisor
4. A NYSDOT Contract Management Assistant Director
5. The NYSDOT Director of Contract Management
6. The NYSDOT Consultant Job Manager
7. The NYSDOT Consultant Job Manager's Immediate Supervisor
8. Any individual(s) that NYSDOT may identify at or after designation

The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee.

**Information Required from Offerers that Contact NYSDOT Staff, Prior to Contract Approval by the Office of the State Comptroller:** The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by NYSDOT. Person's name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether owner, employee, retained by or designated by the firm to appear before or contact the NYSDOT.



**Applicability to an Executed Contract:** Restrictions similar to those described above apply to approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer. The staff noted above as well as the project manager and contractor manager are considered designated contact persons. The Department may identify other contact persons for each of these processes.

**Rules and Regulations and More Information:** If you require more information regarding the rules and regulations pertaining to NYS's Procurement Lobbying Law, please visit: <https://ogs.ny.gov/acpl>, <http://www.jcope.ny.gov/>, or please contact the designated NYSDOT Contact Person:

Ms. Patricia Kappeller, PSA5 RFP  
NYSDOT Office of Contract Management  
50 Wolf Road, 6<sup>th</sup> Floor  
Albany, New York 12232-0203  
E-mail: [Patricia.Kappeller@dot.ny.gov](mailto:Patricia.Kappeller@dot.ny.gov)  
Phone: 518-457-2600

## 8.5 Attachment 5: Prime Consultant Information and Certifications

### RFP #PSA5

PROJECT TITLE: Consultant Planning Service Agreement (PSA5) for NYMTC

#### I. CONSULTANT INFORMATION

FIRM NAME:

ADDRESS:

CITY: STATE:

ZIP CODE: \_ \_ \_ \_ \_ - \_ \_ \_ \_ \_

TELEPHONE #: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ FAX#: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

E-MAIL ADDRESS:

CONTACT PERSON:

Consultant's Federal Identification Number (FIN):

Consultant's Consultant Identification Number (CIN):

Consultant's SFS Vendor Identification Number:

- Please indicate below the name, title, address, and telephone/fax numbers of the person who prepared this Proposal, as well as any other individual(s) with authority to negotiate and contractually bind the offeror and also who may be contacted during the period of Proposal evaluation:

Preparer's Name/Title:

Address:

Telephone #: \_\_\_\_\_ FAX #: E-Mail

Other Authorized Individual(s):

Name/Title

Address:

Telephone #: \_\_\_\_\_ FAX #: E-Mail

Add additional pages if necessary.

## **II. PRIME CONSULTANT CERTIFICATIONS**

By signing below, I, \_\_\_\_\_, authorized individual  
(NAME)

Of \_\_\_\_\_, make the following certifications  
(FIRM)

regarding the subject Proposal:

- **365-Day Firm Offer:** This Proposal is a firm offer for a 365-day (or more) period from the date of submission.
- **Former NYSDOT Employee:** The firm has read and will follow the procedure outlined in **RFP Section 6.2** if it proposes the services of a former NYSDOT employee(s).
- **Vendor Responsibility:** In accordance with New York State law, if selected for contract award, the firm will complete and submit the required Vendor Responsibility questionnaire through the Office of the State Comptroller VendRep system, which is accessible via: <http://www.osc.state.ny.us/vendrep/index.htm>. Vendors must certify the accuracy of the information they provide in the questionnaire and must file their VRQ within 10 days of notification of designation. NYSDOT cannot sign a contract if a firm's vendor responsibility certification is more than 12 months old.
- **ST-220:** If selected for contract award greater than \$100,000, the firm will complete and submit the required Forms ST-220-TD and ST-220-CA during negotiations with NYSDOT. The ST-220 forms with instructions are downloadable from the following websites:  
[http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) (Form ST-220-CA)  
[http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) (Form ST-220-TD)
- **Warranties and Representations:** The Consultant certifies that:
  1. The Consultant shall perform all services in accordance with high professional standards in the industry.
  2. The Consultant shall use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the services.
  3. The Consultant shall use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State.
  4. The Consultant shall use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance.
  5. The Consultant shall perform the services in a manner that does not infringe the proprietary rights of any third party.
  6. The Consultant shall perform the services in a manner that complies with all applicable laws and regulations.
  7. The Consultant has duly authorized the execution, delivery, and performance of the Contract.
  8. The Consultant has not provided any gifts, payments, or other inducements to any officer, employee, or agent of the State.
  - A. Submission of a Proposal is an affirmation by the Consultant that its organization complies with all requirements and specifications set forth in this RFP and that its organization can deliver the requested project while performing the services required in a manner consistent with the requirements and terms of this RFP and under the resulting contract.
- 10. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or

employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

11. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
12. As of January 1, 2019, bidders on New York State procurements subject to competitive bidding are required to submit a Certification on Sexual Harassment in bids. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace, and provides annual sexual harassment prevention training to all its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the Labor Law.
13. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. *This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (Spelled Out): \_\_\_\_\_ Title: \_\_\_\_\_

### **III. ACCEPTANCE OF AGREEMENT**

By signing below, I, \_\_\_\_\_, authorized individual  
(NAME)

of \_\_\_\_\_ hereby **ACCEPT** all terms and conditions  
(FIRM)

contained in the Draft Contract (including Appendix A), which is included as **Attachment 1** to this Request for Proposals.

Signature: \_\_\_\_\_  
(NAME OF ACCEPTOR)

## Attachment 5A. Sub-Consultant Information

(Please Fill Out One of these Forms for EACH Proposed Sub-Consultant)

### **RFP #PSA5**

**PROJECT TITLE: Consultant Planning Service Agreement (PSA5) for NYMTC**

---

#### **I. SUBCONSULTANT INFORMATION**

FIRM NAME:

ADDRESS:

CITY: STATE:

ZIP CODE: \_ \_ \_ \_ \_ - \_ \_ \_ \_ \_

TELEPHONE #: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_ FAX#: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

E-MAIL ADDRESS:

CONTACT PERSON:

Consultant's Federal Identification Number (FIN):

Consultant's Consultant Identification Number (CIN):

Consultant's SFS Vendor Identification Number:

- Please indicate below the name, title, address, and telephone/fax numbers of the person who prepared this Proposal, as well as any other individual(s) with authority to negotiate and contractually bind the offeror and also who may be contacted during the period of Proposal evaluation:

Preparer's Name/Title:

Address:

Telephone #: \_\_\_\_\_ FAX #: E-Mail

Other Authorized Individual(s):

Name/Title

Address:

Telephone #: \_\_\_\_\_ FAX #: E-Mail

Add additional pages if necessary.

**8.6 Attachment 6: Non-Collusive Bidding Certification**

**RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC**

Page 1 of 3

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY  
SECTION 139-D OF THE STATE FINANCE LAW**

SECTION 139-D, Statement of Non-Collusion in bids to the State:

**BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTYTHERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:**

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

**A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:**

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ as the act and deed of said corporation of partnership.

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY  
SECTION 139-D OF THE STATE FINANCE LAW**

**IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:**

**NAMES OF PARTNERS OR PRINCIPALS**

**LEGAL RESIDENCE**


**IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:**

**NAME**

**LEGAL RESIDENCE**

**President:**

**Secretary:**

**Treasurer:**

**President:**

**Secretary:**

**Treasurer:**

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY**  
**SECTION 139-D OF THE STATE FINANCE LAW**

## Identifying Data

Potential Consultant: \_\_\_\_\_

Address: \_\_\_\_\_  
Street

City, Town, etc.

Telephone: \_\_\_\_\_ Title: \_\_\_\_\_

If applicable, Responsible Corporate Officer

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Joint or combined bids by companies or firms must be certified on behalf of each participant.

Legal name of person, firm or corporation      Legal name of person, firm or corporation

By: \_\_\_\_\_  
Name Name

Title	Title
-------	-------

Address: \_\_\_\_\_ Address: \_\_\_\_\_  
Street Street

City State City State



## **8.7 Attachment 7: Vendor Assurance of No Conflict of Interest or Detrimental Effect**

### **RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC**

The Firm offering to provide services pursuant to this RFP, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this [RFP/Contract] does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
5. During the negotiation and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.
9. Firms responding to this RFP should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Firm Name: \_\_\_\_\_

This form must be signed by an authorized executive or legal representative.

**8.8    *Attachment 8: DBE Participation Information***

**RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC**

Not Applicable

**8.9    *Attachment 9: DBE Subconsultant Participation Solicitation Log***

**RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC**

Not Applicable

### 8.10 Attachment 10: Firm Experience

#### RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC

The qualifications and prior experience of the proposing Consultants are of great importance to NYMTC/NYS DOT. Direct, prior experience regarding the delivery of transportation planning services is highly desirable. Comparable firm experience is allowed only if a direct relevancy is clear. Provide a list of projects currently in progress and those completed within the last three to five years which are relevant to the Lot on which you are bidding. Proposers must demonstrate that experience and expertise through past and current project attestations and reachable, verifiable references. NYMTC/NYS DOT reserves the right to request information from any source so named and to contact additional references (including appropriate references not specifically named by Proposers) to completely verify all offered experience.

<b>Requirement Description: Organizational Overview</b>
The organizational overview should consist of a succinct statement outlining corporate and business history including a general mission statement, the overall number of employees per position, and other general information about the firm. The Proposer must demonstrate that it possesses adequate staffing resources, financial resources and organization to perform the type, magnitude and quality of work specified herein this RFP, and demonstrate that the Proposer has been in continuous operation for at least the past <del>five (5)</del> <u>three (3)</u> years. In addition, the Proposer must provide a statement of previous experience that qualifies the Proposer to provide the project Services. Proposer may include information not defined as required in this section but deemed necessary to fully understand the Proposer's company experience and organizational approach.
Consultant's Organizational Overview Response:
<b>Requirement Description: Company Experience</b>
Provide a description of the Proposer's direct, prior experience in delivery of transportation planning services. Describe this experience and related services as well as describing the client in each case, the number of years the Proposer's team has been providing such services, and information documenting the complexity and relative size of previous projects. This should include, but not be limited to:  The type of client (government entity, private company, etc.)  The number of locations  The project duration

The number of Proposer Full-time equivalent staff (FTE's) involved in the implementation
The number of client FTE's involved in the implementation
Other information relevant to describing the client organization in the context of the RFP
Consultant's Company Experience Response:
<b>Requirement Description: Company References</b>
<p>Submit relevant project and contact information for reachable references for up to two past relevant company projects. It is preferred that each cited project experience be of similar scale and scope to this RFP. All cited company references must be reachable (i.e., willing to provide a reference on behalf of the Proposer to NYSDOT upon request). The references should be willing to provide information via an emailed reference response form and possibly follow that up with a conference call to speak further on the Proposer's behalf.</p> <p>Fill out the requested information using the provided form. Use one form for each company reference provided, for up to two past project references. Be sure to cover the proposed Prime Consultant and each proposed Subconsultant.</p>

Consultant's Company Reference Response (include as many completed responses as appropriate):

<i>Reference Company Name:</i>	
<i>Reference Main Line of Business:</i>	
<i>Reference Contact Information</i>	
<i>Primary Contact Person's Name:</i>	
<i>Title:</i>	
<i>Affiliation/Company Employed By:</i>	
<i>Phone:</i>	
<i>Email:</i>	
<i>Project Information</i>	
<i>Project Name:</i>	

<i>Project Start Date:</i>	
<i>Project End Date:</i>	
<i>Project Budget:</i>	
<i>Number of Staff Involved:</i>	
<i>Types of Staff Involved:</i>	
<i>Degree to which offered key personnel were primarily responsible for project delivery:</i>	
<i>Description of all services provided and how they were/are comparable to the size and scope of the services specified in this RFP:</i>	
<i>An explanation of the size and complexity of the project, including how it compares in size to this project:</i>	
<i>A list of all sub-consultants and the duties they performed (if applicable):</i>	
<i>Project results and benefits delivered to the client</i>	

Requirement Description: <b>Experiences with Subconsultant</b>
Information documenting the Proposer's experience working with any proposed sub-contractors (e.g., nature of the relationship, number of engagements worked together, duration of engagements, percent split between firms, etc.).
Consultant's Subconsultant Experience Response:

### ***8.11 Attachment 11: Contract Job Categories***

#### **RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC**

Provide Qualifications, Experience and Resume for Consultant Project Manager and Qualifications for Consultant Key Personnel

The RFP provides the following job categories, including Typical Position Titles and role descriptions, to assist proposers in offering qualified candidates.

Any offered key personnel are required to be available to deliver the Lot duties. All replacement key personnel, which must be provided to minimize schedule impact, are subject to NYMTC review and approval.

In your Technical Proposal Approach, you should present your ability to reasonably provide qualified consultant personnel for each Lot and your ability to ensure that all consultant personnel assigned to a Lot are available to provide requested support services in a time frame which meets the contract's schedule.

In addition to providing a Consultant Project Manager, the RFP requires the selected Consultant to present qualifications for all other proposed key personnel to perform the relevant duties in each Lot on which you are proposing in the job categories described below. Present key personnel qualifications in a concise format.

The levels of position are distinguished by the depth and breadth of the knowledge areas of the subject matter. Note: The minimum qualifications and duty descriptions are presented for guidance purposes and are not intended to confine consultants to the specifics of the categories presented. **However, Consultants shall fit key personnel into each presented job category and level of responsibility as accurately as possible.**

#### **Job Category:**

##### **8.11.1 Consultant Project Manager**

Typical Position Titles: Consultant Project Manager, Consultant Task Assignment Manager, Project Manager

Typical duties may include: Supervises, directs and coordinates activities of personnel involved in each assignment to ensure assignment progresses on schedule and within prescribed budget. Plans, directs, and coordinates activities of assignment to ensure that goals or objectives are accomplished. Responsible for the performance of all work components and elements; ensures the execution and delivery of the assignment. Primary contact with the NYMTC Project Manager. Submits timely progress reports and invoices.

#### 8.11.2 Transportation Planner

Typical Position Titles: Transportation Planner, Urban and Regional Planner, Geographer

Typical duties may include: Supports the development and maintenance of transportation planning studies, reports and programs. Designs, directs and conducts transportation systems planning, program planning, and project development. Reviews activities in support of transportation planning products. Works and consults with member agency staff and representatives of state and local governments. Possesses understanding and knowledge of applicable transportation planning programs, regulations, and requirements.

#### 8.11.3 Technical Analyst

Typical Position Titles: Technical Analyst, Transportation Analyst, Transportation Modeler, Data Analyst, Survey Researcher, Economist, Demographer, Operations Research Analyst, Statistics Assistant, IT Specialist

Typical duties may include: Designs, directs and conducts the technical analyses and research to support transportation planning, including surveys, studies, forecasts and modelling. Collects and analyzes transportation data and statistics to support the development of transportation programs and assess transportation system performance and travel behavior. Works and consults with member agency staff and representatives of state and local governments. Has strong technical background to support transportation planning policies, procedures and data analysis.

#### 8.11.4 Geographic Information Systems (GIS) Specialist

Typical Position Titles: GIS Specialist, GIS Analyst, Remote Sensing Technologist, Mapping Technologist, Geographer, Planner

Typical duties may include: Produces data layers, maps, tables, or reports using spatial analysis procedures or Geographic Information Systems (GIS) technology, equipment, or systems. Designs or prepares graphic representation of GIS data using GIS hardware or software applications. Performs computer programming, data analysis, or software development of GIS applications. Has specialized technical training in GIS applications to support transportation planning policies, procedures and data analysis.

#### 8.11.5 Public Involvement Specialist

Typical Position Titles: Public Involvement Specialist, Public Information Specialist, Media Relations Specialist, Marketing and Promotions Specialist

Typical duties may include: Prepares, edits and disseminates informational materials related to transportation planning and programs through various media including brochures, reports, media advisories, press releases, public notices, websites, and social media. Coordinates meetings and events, press conferences, interviews, and responses to press inquiries. Works and consults with member agency staff and representatives of state and local governments. Has strong background in public involvement, outreach and engagement, including in-person and virtual approaches.



## Staff General Description of Responsibility

Staff Level	General Description of Responsibility (Does not apply to Consultant Project Manager Role)	Years of experience (guidance)
Level I	Under supervision of senior staff, conducts and coordinates studies or analyses; reviews and recommends actions; prepares or assists in preparing and reviewing study designs and reports. Investigates issues and identifies solutions; evaluates the effectiveness of solutions.	Generally 1-3 years' experience
Level II	Performs the most difficult investigations and analyses. Develops study designs or supervises subordinate staff in conducting such tasks. Prepares or reviews the most difficult of such tasks. Prepares or gives close direction to projects involving novel or especially difficult problems or approaches.	Generally 4-7 years' experience
Level III	Principal expert in specialized field. Conducts challenging or unique studies and analyses or may supervise staff in conducting such studies and analyses. Reviews technical reports and study designs. May oversee interaction with member agency staff and representatives.	Generally 8+ years of experience

NOTE: A master's degree in planning, Economics, Demography, Geography, Urban Studies or a Science, Technology, Engineering and Mathematics (STEM) field may be substituted for one year of the required experience. A Ph. D. in Planning, Economics, Demography, Geography, Urban Studies or a STEM field may be substituted for two years of the required experience.

<b>Key Personnel Job Category Requirements by Lot</b>					
	Consultant Project Manager	Transportation Planner	Technical Analyst	Geographic Information Systems (GIS) Specialist	Public Involvement Specialist
Lot 1 - Programs and Grants Support	Y	Y			
Lot 2 - Data Collection, Monitoring and Analysis	Y		Y		
Lot 3 - Geographic Information System (GIS) Support	Y			Y	
Lot 4 - Public Involvement, Outreach and Engagement Support	Y				Y
Lot 5 - Model Support, Updates and Enhancements	Y		Y		
Lot 6 - Transportation Conformity Determination Support	Y		Y		

“Y” – Proposer shall use the Job Category in proposals submitted for this Lot.

## 8.12 Attachment 12: Key Personnel Experience

### RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC

~~Provide a resume for each proposed Consultant Project Manager and each Key Personnel.~~

Complete a profile form for each proposed Key Personnel including the Consultant Project Manager.

One form is provided below. Use additional pages as needed.

#### ~~EXPERIENCE~~Profile Form:

<del>Personnel Name and Job Category &amp; Level from Attachment 11: Consultant Project Manager:</del>	
Professional Associations, Degrees, and Certifications:	
Number of Years of Relevant Experience in the Proposed Project Role:	
Description of Relevant Experience:	

Provide a resume for each proposed Key Personnel including the Consultant Project Manager.

#### Consultant Key Personnel Experience and References:

Provide two references per proposed Key Personnel including the Consultant Project Manager contractor staff person.

- A. Can cite more than one project – work needs to be relevant to the RFP.
- B. Use below form, one for each (fill in number blank – i.e., Staff Reference #1; Staff Reference #2, etc.)
- C. Form is expandable – be concise.

~~D.~~

~~E.A. Reference check evaluation criteria provided below.~~

Client Name (Reference Company):	
Reference Main Line of Business:	
Project Name:	
Name & Title of Contact:	
Email Address & Telephone Number:	
Provide a Brief Description of Recent, Relevant Project for which they are Serving to Reference	

#### D. Staff Reference Check Evaluation Criteria provided below:

- a. ~~Reference check evaluation criteria provided below.~~ Describe the nature of the project and the work that this staff member performed for you.
- b. How would you rate the staff member's experience and qualifications?
- c. How well did the staff member respond to your needs?

- d. How pleased are you with the work the staff member has performed/is performing for you?
- e. Would you contract with this staff member again?

<b><del>Staff Reference Check Evaluation Criteria:</del></b>	
<del>Describe the nature of the project and the work that this staff member performed for you.</del>	
<del>How would you rate the staff member's experience and qualifications?</del>	
<del>How well did the staff member respond to your needs?</del>	
<del>How pleased are you with the work the staff member has performed/is performing for you?</del>	
<del>Would you contract with this staff member again?</del>	

### ***8.13 Attachment 13: Cost Proposal***

#### **RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC**

The Cost Proposal Spreadsheet template is to be downloaded from the NYSDOT project or NYMTC Project website:

- <https://www.nymtc.org/Utility-Menu/Doing-Business/Current-RFPs>
- <https://www.dot.ny.gov/business>, select 'Ads' or 'Consulting Service Opportunities'.

#### ***8.14 Attachment 14: Compendium of Lots***

##### **RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC**

The RFP requires the selected Consultant to make available (after reasonable notice) key personnel qualified to perform support services associated with delivery of the awarded Lot. The Scopes of Services associated with each Lot are presented below. Given the collaborative nature of the planning and programming work undertaken at NYMTC, all selected consultants may be required to work with other selected consultants performing work on other Lots.

All consultant personnel assigned to a PSA5 assignment shall be required to sign a non-disclosure agreement. Consultant personnel performing support services at a location other than NYMTC's offices, that are granted access to the State network, will be required to comply with any and all NYSDOT / New York State Office of Information Services policies and procedures related to such an arrangement.

**Proposers must submit separate Proposals for each Lot for which a Proposal is offered; each Proposal must include:**

**Part I - Technical and Management Proposal;**

**Part II - Cost Proposal; and**

**Part III - Administrative Proposal**

## **Lot 1 - Programs and Grants Support**

### **Resource Requirements:**

NYMTC is seeking a consultant firm to provide one continuous, long term in-house contractor to augment NYMTC staff in providing programs and grants support. The person assigned to this Lot shall work full time at NYMTC's offices with no home-office support. This staff person will work under the general supervision of a NYMTC supervisor or manager and operate with a degree of creativity and latitude. It is anticipated that attending outside meetings may occasionally occur. The anticipated overall annual level of effort for this Lot is 2,000 hours. The selected consultant shall demonstrate that they have the expertise, experience, and resources available to perform the work described in this Lot.

~~At a minimum, k~~Key personnel shall be offered for ~~the~~ following job categories for this Lot:

- A. Consultant Project Manager
- B. Transportation Planner

### **Lot Description:**

Metropolitan planning organizations develop Unified Planning Work Programs to make use of federal funds for transportation planning. The Consultant shall support the development of an annual update to the New York Metropolitan Transportation Council's (NYMTC) Unified Planning Work Program (UPWP). The UPWP defines the planning priorities in NYMTC's planning area and describes all federally-funded transportation-related planning activities anticipated within a given program year. Its successful completion each year enables federal funding assistance to undertake planning activities by NYMTC's staff and its members effective April 1<sup>st</sup> of each program year.

The Consultant will also support the development and management of NYMTC's Transportation Improvement Program (TIP). The federally-mandated TIP defines all of the federally-funded transportation projects proposed for planning, design and implementation in the NYMTC planning area over a rolling five-year period. The TIP documents NYMTC's medium-range transportation improvements that are eligible for federal funding -- projects that will strengthen and enhance the State's bridges, highways, transit services, bikeways and walkways. The TIP is derived from and consistent with NYMTC's Regional Transportation Plan. NYMTC generally follows a three-year development cycle for the TIP. TIP adoptions precede the start of a federal fiscal year.

The Consultant shall also support the solicitation of project proposals from various organizations and/or the NYMTC member agencies for funding consideration under various federal funding programs, and the selection of projects for funding. Grant programs for which NYMTC has project solicitation responsibility include Section 5310 Enhanced Mobility of Seniors & Individuals with Disabilities; the Transportation Alternative set-aside of the Surface Transportation Block Grant Program; and the Congestion Mitigation/Air Quality Improvement Program. The Consultant may also support the preparation of project proposals for various discretionary federal funding programs.

Working with and through the NYMTC Project Manager (PM), the Consultant shall undertake some or all of the following activities in support of updating NYMTC's Unified Planning Work Program, supporting the development and maintenance of the TIP, and coordinating grant program solicitations:

- A. Develop master timelines of federally-required planning products and analyses and projection over five program year period.
- B. Formulate detailed guidance packages for each UPWP or TIP update cycle.
- C. Provide assistance regarding UPWP project budgeting.
- D. Provide support activities including preparing relevant UPWP, TIP and Plan actions, developing proposed UPWP or TIP amendments and administrative modifications, or developing any reports requested by FHWA, FTA or NYSDOT.
- E. Review various grant program project proposals, and other project proposals, for completeness and against eligibility criteria.
- F. Review project information to ensure compliance with federal guidelines and to facilitate related GIS mapping.
- G. Input project information into relevant databases and/or content management software.
- H. Convene project review committees and assemble committee rating information for projects under consideration for UPWP or TIP inclusion, and for grant program solicitations.
- I. Rank project proposals based on committee ratings.
- J. Prepare final materials and project information for consideration and action by applicable NYMTC committees.

Deliverables for these activities may include the following:

- 1. Annual NYMTC UPWP documents
- 2. Technical memorandum describing the five-year UPWP program projection
- 3. UPWP update guidance package(s) as assigned
- 4. Draft and final versions of proposed UPWP amendments and administrative modifications
- 5. Technical memorandum describing the grant program schedule and public outreach/education program
- 6. Technical memorandum describing the ranking of project proposals based on committee ratings and a summary of the methodology/criteria employed
- 7. Draft and final TIP document sections, including project listings, as assigned, with all required metrics and graphics, maps, figures, and tables

The Consultant shall assign key personnel to perform and deliver this Lot that have experience with some or all of the following:

- A. Working knowledge of regional planning, particularly transportation planning, and transportation systems analysis
- B. Understanding and knowledge of applicable transportation planning grant programs, regulations, and requirements
- C. Ability to develop and manipulate databases
- D. Experience with document preparation, formatting, and editing



## Lot 2 - Data Collection, Monitoring and Analysis

### **Resource Requirements:**

NYMTC requires periodic, on-call support services from a consultant team comprised of a flexible pool of staff resources with varying levels of expertise and experience for data collection, monitoring and analysis. Work assignment will be done through the issuing of Task Orders as needed under this Lot. All Task Orders shall be jointly developed by the NYMTC Project Manager and the Consultant. Task Orders shall have a detailed scope of services, schedule, and budget (featuring hours by task, Job Category, and Level) and shall include descriptions of NYMTC staff involvement. Following agreement on each Task Order, the Consultant will assign staff with relevant expertise to meet the requirements of the ~~assignment~~ Task Order. ~~It is anticipated that the work (hours) related to Lot 2 shall be performed at the Consultant's offices.; the assigned staff shall work at NYMTC's offices with no home office support. It is anticipated that attending outside meetings may occasionally occur.~~ The anticipated overall annual level of effort for this Lot is 2,000 hours. The selected consultant shall demonstrate that they have the expertise, experience, and resources available to perform the work described in this Lot.

At a minimum, kKey personnel shall be offered in the following job categories for this Lot:

- A. Consultant Project Manager
- B. Technical Analyst

### **Lot Description:**

To better plan for the region's future transportation needs, NYMTC collects, stores, and analyzes data and develops forecasts. Data collection, monitoring and analysis supports NYMTC's planning processes, including the development and management of New York Metropolitan Transportation Council's (NYMTC) UPWP, Transportation Improvement Program (TIP), travel surveys, Socio-economic and Demographic (SED) forecasts, and key statistical reports.

The Consultant shall provide support for data collection, monitoring and analysis services for any work specified in the approved annual NYMTC Unified Planning Work Program (UPWP). The UPWP defines the planning priorities in NYMTC's planning area and describes all federally-funded transportation-related planning activities anticipated within a given program year.

Working with and through the NYMTC Project Manager, the Consultant shall undertake some or all of the following data support activities to implement NYMTC's needs and requirements (a modest amount of additional supporting task work may be defined and required after notice to proceed):

- A. Analyze data needs of users and develop systems and procedures to collect data, including reporting formats, quality control, instruction, procedures, collection schedules, and flow charts.
- B. Using multiple data sources, collect, analyze, and update various data (e.g., transportation and demographic data, freight and commodity flow data, travel survey data, transportation project data, other transportation-related data).

- C. Review, assist with, and monitor data collection activities to ensure that data are available to meet all federal requirements under federal regulations.
- D. Analyze and manipulate data. Develop data products and assorted reports to document these data, including creating maps, figures, tables, spreadsheets, tabulations, graphs, and written analysis.
- E. Prepare reports based on the analysis of data as requested by NYMTC.
- F. Develop data products for internal and external users. Respond to data requests (using tools such as SPSS, SAS, ArcGIS, TransCAD, Excel, Access) to create tables, maps, charts, and queries.
- G. Coordinate data needs, application needs, information sharing, and data integration. Maintain metadata, and file structures on the server.
- H. Research and make recommendations on the design of web-based templates for users to extract and analyze the available data from the web.
- I. Assist NYMTC in developing web sections for dissemination of data and information.
- J. Develop procedures and manuals for use by agency staff.
- K. Research and participate in developing new methods and techniques for data collection and analysis.
- L. Develop strategies for NYMTC to become a strategic information center for the dissemination and sharing of transportation planning data.
- M. When directed by NYMTC, represent NYMTC with other entities in matters involving databases, data collection efforts, forecasting or other data-related matters as requested.

Deliverables for these activities may include the following:

- 1. Data files in Access, Excel, Tableau, GIS or other formats, as appropriate.
- 2. Reports (including technical memoranda, publications, analytic documents, briefings, tables, charts, maps, etc.) based on the analysis of transportation planning and related data in the New York metropolitan region as requested by NYMTC staff, its member agencies and other data users.
- 3. Documentation of procedures and methodologies; recommendations for enhancements.
- 4. Recommendations for implementing innovative data collection, including passive data, active data, use of Big Data, or other technologies.
- 5. Other documents as requested by NYMTC.

The Consultant shall assign key personnel to perform and deliver this Lot who should have experience with some or all of the following:

- A. Strong technical background to conduct statistical analysis in addition to graphical representation of data, including spatial data, using software packages such as R, Python, SAS, ArcGIS, and Tableau.
- B. Strong understanding of transportation planning policies, procedures and expertise in analyzing data that informs the transportation planning process.
- C. Knowledge and experience with regional demographics, travel survey, transportation systems, transportation improvement projects, etc.
- D. Knowledge of demographic and economic models and travel demand forecasting models preferred.
- E. Good verbal skills and interpersonal skills.

F. Strong writing, editing and organization skills.

### **Lot 3- Geographic Information System (GIS) Support**

#### **Resource Requirements:**

NYMTC is seeking a consultant firm to provide one continuous, long term in-house contractor to augment NYMTC staff to undertake Geographic Information Systems (GIS) activities. The staff person assigned to this Lot shall work at NYMTC's offices with little home-office support. This staff person will work under the general supervision of a NYMTC supervisor or manager and operate with a degree of creativity and latitude. The anticipated overall annual level of effort for this Lot is 2,000 hours. The selected consultant shall demonstrate that they have the expertise, experience, and resources available to perform the work described in this Lot.

At a minimum, key personnel shall be offered in the following job categories for this Lot:

- A. Consultant Project Manager
- B. GIS Specialist

#### **Lot Description:**

The New York Metropolitan Transportation Council (NYMTC) uses Geographic Information System (GIS) to link data to locations. By linking data with their locations, relationships, patterns, and trends can be better analyzed and interpreted and visualized on maps and GIS-based web applications. GIS is a powerful tool used to enhance the planning process in the NYMTC area. GIS is used in many different industries such as transportation, environmental, planning, and homeland security, among others.

NYMTC maintains and updates the Transportation Information Gateway (TIG), an interactive, collaborative website that provides NYMTC members and the public with an easily accessible online warehouse. Users can locate, query, visualize and download transportation planning data using the TIG.

The Consultant shall provide support for GIS services for any work specified in the approved annual NYMTC Unified Planning Work Program (UPWP). The UPWP defines the planning priorities in NYMTC's planning area and describes all federally-funded transportation-related planning activities anticipated within a given program year.

Working with and through the NYMTC Project Manager, the Consultant shall undertake some or all of the following GIS activities in support of implementing NYMTC's needs and requirements (a modest amount of additional supporting task work may be defined and required after notice to proceed):

- A. Develop and maintain NYMTC region GIS data.
- B. Develop quality assurance/quality control (QA/QC) protocols for the development and maintenance of NYMTC data.
- C. Collect and maintain GIS data (transportation, demographic, environmental, Intelligent Transportation System, etc.) from NYMTC, NYMTC member agencies, and other sources.

- D. Develop and maintain NYMTC's GIS web section with the associated applications on NYMTC's website; support web-based application projects and NYMTC's Transportation Information Gateway (TIG).
- E. Analyze and integrate GIS databases including NPMRDS, NHTS, GPS, land use, demographic, environmental, etc.
- F. Produce GIS maps and spatial analyses to support Transportation Improvement Program (TIP), Regional Transportation Plan (RTP), Congestion Management Process (CMP), New York Best Practice Model (NYBPM) and other NYMTC outreach processes. Some examples include:
  - a. Develop maps in accordance with requirements for different business areas
  - b. Develop NYMTC map templates
  - c. Develop an automated mapping program to meet repetitive mapping needs
  - d. Make mapping easier for non-GIS users
  - e. Enable maps to be viewed and printed from the NYMTC GIS web site
  - f. Develop a web-based map application to be utilized by public to view the speed and travel time data
  - g. Analyze/map the travel characteristic data to support modeling and planning projects
  - h. Assist NYMTC's modeling efforts as directed
  - i. Develop various GIS web-applications using ArcGIS Online.
  - j. Provide visualizations of data using Tableau, ArcGIS StoryMap and other software.
  - k. Develop and maintain GIS web section with the associated applications on NYMTC's website ([www.nymtc.org](http://www.nymtc.org)).
  - l. Maintain inventory, metadata, and file structures on the server.
  - m. Prepare training material and provide training at NYMTC's office to other GIS users (NYMTC staff).

Examples of deliverables may include (but not be limited to):

- 1. Maps developed in accordance with requirements for different business areas
- 2. NYMTC map templates
- 3. Automated mapping program to meet repetitive mapping needs
- 4. Techniques to make mapping easier for non-GIS users
- 5. Maps able to be viewed and printed from the NYMTC GIS web site
- 6. Web-based map application to be utilized by public to view the speed and travel time data
- 7. Analysis and mapping of the travel characteristic data to support modeling and planning projects
- 8. Assistance with NYMTC's modeling efforts as directed

The Consultant shall assign key personnel to perform and deliver this Lot who should have experience with some or all of the following:

- A. Strong GIS Programming skills with ArcGIS
- B. Strong Python/ C++ / Java/Visual Basic programming skills

- C. Suitable experience in Application development using ArcObjects within ArcGIS 10.x, ArcGIS Engine, ArcGIS Online, and ArcGIS Server
- D. Appropriate experience in GIS Database Design for Transportation data using GeoDatabase, MS-Access, ArcSDE, Oracle and SQL Server
- E. Experience in analyzing NPMRDS (National Performance Management and Research Dataset) data
- F. Working knowledge of graphical representation of data to produce GIS applications and maps using ArcGIS (and possibly TransCAD), Tableau, ArcGIS StoryMap
- G. Strong technical background to conduct statistical analysis and data manipulation in addition to graphical representation of data
- H. Strong communication and presentation skills

## **Lot 4 - Public Involvement, Outreach and Engagement Support**

### **Resource Requirements:**

NYMTC is seeking an on-call team with varying levels of expertise and experience to provide public involvement, outreach and engagement support on an as-needed basis. It is anticipated that 80% of the work (hours) related to Lot 4 shall be performed at the Consultant's offices, with coordination and progress meetings, as well as specific designated tasks, to be completed on-site at NYMTC's offices as needed. Assignments will be made by the NYMTC Project Manager. The team will have limited supervision with considerable latitude for use of initiative and independent judgement. The anticipated overall annual level of effort is 3,000 hours. The selected consultant shall demonstrate that they have the expertise, experience, and resources available to perform the work described in this Lot.

At a minimum, key personnel shall be offered in the following job categories for this Lot:

- A. Consultant Project Manager
- B. Public Involvement Specialist

### **Lot Description:**

New York Metropolitan Transportation Council's (NYMTC's) public involvement, outreach and engagement efforts strive to bring varied stakeholders into the process – in more dynamic and meaningful ways – and enhance the level of interaction. The Consultant shall support NYMTC's Public Involvement, Outreach, and Engagement activities, including its public involvement program implementation, Title VI program activities, and website/social media updates.

Under federal legislation, public involvement is required to better involve the region's residents and employers in the transportation planning process. Additionally, as a recipient of federal funds, NYMTC adheres to Title VI requirements to ensure that public funds are not spent in a way that encourages, subsidizes, or results in discrimination. The goal of Title VI is to remove barriers that prevent protected groups and persons from receiving access, participation and benefits from federally assisted programs, services, and activities. As a step toward a more inclusive planning process, NYMTC's Language Access Program provides translation services for people who are not fluent in English. The Language Access Program is a further enhancement to NYMTC's public involvement efforts to increase the accessibility of information about and input into the regional transportation planning process.

NYMTC hosts and maintains its website, [nymtc.org](http://nymtc.org), as an important mode to provide information to the public and employs social media such as Twitter, Facebook, YouTube, etc. to engage the public.

Working with and through the NYMTC Project Manager, the Consultant shall undertake some or all of the following activities in support of public involvement, outreach and engagement activities, such as (a modest amount of additional supporting task work may be defined and required after notice to proceed):

- A. Plan and direct public information, outreach and engagement programs designed to create and maintain a good public outreach effort.
- B. Execute NYMTC's public involvement, outreach and engagement activities including, but not limited to, coordinate meetings and events; assist with presentations; draft outreach material including media advisories and press releases; issue social media posts; coordinate press conferences, interviews, and responses to press inquiries; and update the agency website.
- C. Assist NYMTC staff in evaluating current efforts and adapting new approaches to public involvement, outreach, and engagement activities such as virtual presentations, webinars, digital town halls, electronic polling, etc.
- D. Manage communication with press, staff, consultants, information offices, member agencies and public. Maintain the distribution and media lists.
- E. Support public information and communications operation for NYMTC including formulating communication/marketing strategy.
- F. Edit newsletters, technical reports, annual reports, brochures and other publications.
- G. Review federal requirements and evaluate the current public involvement and Title VI programs including Limited English Proficient (LEP) plan.
- H. Assist to develop/update LEP plan to ensure public access to NYMTC documents, website and public involvement activities.
- I. Review and update current Title VI program components such as policy statements, assurances, complaint procedures, etc. As needed develop documented Title VI Plan and assist with annual Title VI reports.
- J. Assist in development of specific webpages on NYMTC's website for newsletters, public outreach periods, projects, or studies.
- K. Review and report web site statistics produced by tracking software.
- L. Assist with the development of any reports requested by NYMTC staff or its member agencies.

Deliverables for these activities may include the following:

- 1. Maintained and up-to-date NYMTC Public Involvement Plan
- 2. Technical Memorandum, describing results and recommendations for the Public Involvement Plan, the Title VI program, and the LEP plan
- 3. Updated NYMTC Title VI program components and Title VI Plan as needed
- 4. Draft material for Title VI reports
- 5. Newsletters, press releases, social media posts, media advisories, media lists
- 6. Ongoing meetings and events support
- 7. Maintain relationships and contacts with member agency representatives

The Consultant shall assign key personnel to perform and deliver this Lot who should have experience with some or all of the following:

- A. Experience and understanding of regional planning, particularly transportation planning, and associated federal regulations
- B. Strong background in public involvement, outreach and engagement, including in-person and virtual approaches
- C. Strong background in graphical design, website design, and layout



- D. Extensive experience working with web sites and social media
- E. Excellent writing and editing skills for quality reports and public relations impact
- F. Excellent verbal and presentation skills
- G. Excellent interpersonal and organization skills

## Lot 5 - Model Support, Updates and Enhancements

### **Resource Requirements:**

This Lot is comprised of two Tracks, including one staff augmentation track (Track 1) and one track for a consultant team to provide on-call support services (Track 2). The proposer must be able to meet the requirements and needs for both Tracks. The selected consultant shall demonstrate that they have the expertise, experience, and resources available to perform the work for both tracks described in this Lot.

At a minimum, Key personnel shall be offered in the following job categories for this Lot:

- A. Consultant Project Manager
- B. Technical Analyst

### Track 1 - Two (2) Staff Augmentation In-House Contractors

NYMTC is seeking a consultant firm to provide two (2) continuous, long-term in-house contractors to augment NYMTC staff for model support, updates and enhancements to NYMTC's travel demand model (New York Best Practice Model (NYBPM)) and its post-processor software (Post Processor Software for Air Quality and Congestion Management Program (PPS-AQ and PPS-CMP)).

One in-house contractor will work under the general supervision of a NYMTC supervisor or manager and operate with a degree of creativity and latitude. The second staff person will work with limited supervision and with considerable latitude for use of initiative and independent judgement. Both in-house contractors must have relevant specialized knowledge, experience and expertise to support NYMTC staff in meeting the requirements of this Lot. Both in-house contractors shall work full time at NYMTC's offices with no home-office support. It is anticipated that attending outside meetings may occasionally occur. The anticipated overall annual level of effort for Track 1 is 2,000 hours for each contractor; 4,000 annual hours in total.

### Track 2 – On-Call Support Service Consultant Team

NYMTC is seeking periodic, on-call support services from a consultant team with a flexible pool of staff resources with varying levels of expertise and experience to advise and support NYMTC staff, the Track 1 in-house contractors, as well as other NYMTC contractors/university researchers, in its development, update, enhancements, and implementation of its travel demand model (NYBPM) and post-processing software (PPS-AQ and PPS-CMP).

Under Track 2, the on-call consultant team will provide ongoing technical assistance, procedures modifications and model extensions, testing and model user support for the existing and the newly deployed NYBPM as well as the post-processor software and other inter-related models. Also, the Consultant shall be requested to assist NYMTC staff to modify the NYBPM to address corrective issues, and to develop custom procedures for specialized travel demand analyses required by NYMTC or its member agencies.

Work assignment for Track 2 will be done through the issuing of Task Orders as needed under this Lot. All Task Orders shall be jointly developed by the NYMTC Project Manager and the Consultant, and shall have a detailed scope of services, schedule, and budget (featuring hours by task and person) and shall include descriptions of NYMTC staff involvement.

It is anticipated that most of the work (hours) related to Track 2 shall be performed at the Consultant's offices, with coordination and progress meetings, as well as specific designated tasks, to be completed on-site at NYMTC's offices if needed. The anticipated overall annual level of effort for Track 2 is 1,000 hours.

Lot Description:

New York Metropolitan Transportation Council (NYMTC) has had an activities-based travel demand model called the New York Best Practice Model, or NYBPM, for more than 20 years to forecast future travel patterns on the regional transportation system. The activity-based modeling approach allows for better analysis of emerging demographics, mobility, and technology. The NYBPM uses a combination of customized programs and TransCAD GIS software using a menu driven system (graphical user interface). The NYBPM integrates the following three components:

- A. PopGen, the synthetic population generator;
- B. CEMSELTS, the socioeconomic modeling system; and
- C. CEMDAP, the activity-based modeling engine.

NYMTC also uses two post processors for the NYBPM outputs for transportation conformity and performance measures for the congestion management process: the Post Processor Software for Air Quality (PPS-AQ) and the Post Processor for the Congestion Management Process (PPS-CMP), respectively.

The Consultant shall provide model support, updates and enhancements services required to technically support the NYBPM and/or the PPS for any work specified in the approved annual Unified Planning Work Program (UPWP). The UPWP defines the planning priorities in NYMTC's planning area and describes all federally-funded transportation-related planning activities anticipated within a given program year, some of which may entail travel demand modeling, forecasting and post-processing.

Working with and through the NYMTC Project Manager, the Consultant shall provide ongoing technical assistance, procedures development/modifications, model updates/enhancements, testing, and model user support for the NYBPM and PPS, undertaking some or all of the following activities in support of implementing NYMTC's modelling, forecasting, and post-processing task work (a modest amount of additional supporting task work may be defined and required after notice to proceed):

- A. Analyze the needs and requirements of NYMTC region in terms of the NYBPM travel demand modeling, forecasting, and goods movements analysis.
- B. Assist in NYBPM updates and improvements to networks (highway and transit). Prepare/review applicable technical memoranda and testing results.

- C. Update and validate NYBPM with data developments/updates, highway network updates and refinements, transit network updates and refinements, and other NYBPM model enhancements and validation. Coordinate, integrate and prepare final reports for updates and enhancements.
- D. Implement and test new and improved versions of the NYBPM model software, Graphical User Interface, model graphics, and reports.
- E. Implement and test new and improved components of NYBPM in order to better replicate travel in the region and to support other transportation planning activities (e.g., regional emissions analysis and transportation conformity determinations, Regional Transportation Plan updates, other studies in the region, etc.).
- F. Upgrade the NYBPM to the latest TransCAD version to expedite model run time and enhance performance. Prepare/review technical memoranda and testing results.
- G. Support NYBPM updates and next generation programs.
- H. Develop, test and implement state of the art practices in transportation–emission modeling Post Processor software for conformity analysis and congestion management process.
- I. Conduct testing of all NYBPM and PPS deliverables prior to NYMTC acceptance.
- J. Support the maintenance of NYBPM and PPS platforms and test-related deliverables.
- K. Work with experts in the field to understand the state-of-the-practice.
- L. Work with practitioners and users of the NYBPM and PPS to synthesize their experience and suggestions.
- M. Assist NYMTC to provide a realistic timeline for future model development and data needs assessment and in prioritizing the improvements needed to the models to best fit the region’s needs.
- N. Contribute to the development of technical documentation for the upgrade to the NYBPM and PPS.

Deliverables may include:

- 1. Documentation of any modifications done on the NYBPM- and/or PPS-related software.
- 2. Modified procedures and/or data files, including scripts and the related databases, or other deliverables based on NYBPM and/or PPS related software.
- 3. Validation statistics, where applicable.
- 4. Documented responses to technical support inquiries from NYBPM and/or PPS users.
- 5. Updated user’s manual and procedures.

The Consultant shall assign key personnel to perform and deliver this Lots who should have experience with some or all of the following:

- A. In-depth knowledge and solid technical skills in travel demand forecasting, post-processing, statistical analysis, and data manipulation; specifically, those related to the NYBPM and/or PPS Suite.
- B. Access to and ability to modify updated NYBPM methods, scripts and core program source coding.
- C. Understanding of and the ability to modify NYMTC’s Socioeconomic and Demographic (SED) data and highway and transit network data for use in the NYBPM.

- D. Experience with NYMTC's latest version of the New York Best Practice Model (NYBPM), which is mandatory, including access to source code which is readily available upon request to all bidders.
- E. Knowledge and experience with Air Quality analysis and USEPA's MOtor Vehicle Emission Simulator (MOVES).
- F. Skills in computer programming language such as GISDK and C++ to modify NYBPM related software.
- G. Extensive knowledge of TransCAD, R, and Python.
- H. Excellent interpersonal skills.
- I. Strong written and verbal communication skills.

## **Lot 6 - Transportation Conformity Determination Support**

### **Resource Needs:**

This Lot is comprised of two Tracks, including one staff augmentation track (Track 1) and one track for a consultant team to provide on-call support services (Track 2). The proposer must be able to meet the requirements and needs for both Tracks. The selected consultant shall demonstrate that they have the expertise, experience, and resources available to perform the work for both tracks described in this Lot.

At a minimum, key personnel shall be offered in the following job categories for this Lot:

- A. Consultant Project Manager
- B. Technical Analyst

### **Track 1 – One (1) Staff Augmentation In-House Contractor**

NYMTC is seeking a consultant firm to provide one continuous, long term in-house contractor to support the required transportation conformity determinations. The dedicated and identified in-house staff person shall have relevant experience for the majority of the tasks related to the Lot and shall work at NYMTC's offices, with some on-call, home-office support. The in-house staff person will work under the general supervision of a NYMTC supervisor or manager and operate with a degree of creativity and latitude. The anticipated overall annual level of effort for Track 1 is 2,000 hours.

### **Track 2 – On-Call Support Service Consultant Team**

NYMTC is seeking periodic, on-call support services from a consultant team with a flexible pool of staff resources with varying levels of expertise and experience to advise and support NYMTC staff, the Track 1 in-house contractor and to provide supplemental support to meet the needs of this Lot. The on-call support team will be comprised of staff with varying levels of expertise and experience to meet the complexity of the services of this Lot.

Work assignment for Track 2 will be done through the issuing of Task Orders as needed under this Lot. All Task Orders shall be jointly developed by the NYMTC Project Manager and the Consultant, and shall have a detailed scope of services, schedule, and budget (featuring hours by task and person) and shall include descriptions of NYMTC staff involvement.

It is anticipated that most of the work (hours) related to Track 2 shall be performed at the Consultant's offices, with coordination and progress meetings, as well as specific designated tasks, to be completed on-site at NYMTC's offices if needed. The anticipated overall annual level of effort for Track 2 is 500 hours.

### **Lot Description:**

Transportation conformity is required by the Clean Air Act Amendment of 1990 to ensure that federal funding and approval are given to highway and transit projects that are consistent with ("conform to") the air quality goals established by a state air quality implementation plan (SIP).

Through Transportation Conformity Determinations, New York Metropolitan Transportation Council (NYMTC) quantitatively demonstrates how its Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) projects impact future motor vehicle emissions budgets. In general, NYMTC conducts transportation conformity once per year.

To determine transportation conformity, NYMTC forecasts mobile source emissions for a Regional Transportation Plan and Transportation Improvement Program; compares mobile source emissions forecasts to emissions budgets set in the State Implementation Plan (SIP) for Air Quality; and establishes that emissions budgets will not be exceeded.

The Consultant shall provide regional emissions analysis support required for transportation conformity determination to support any work specified in the approved annual Unified Planning Work Program (UPWP). The UPWP defines the planning priorities in NYMTC's planning area and describes all federally-funded transportation-related planning activities anticipated within a given program year, some of which may entail regional emissions analysis and transportation conformity determination activities. The Consultant shall provide support services to ensure that all the latest assumptions are adequately incorporated in the NYBPM including procedure and coding updates for highway and transit coding as part of required transportation conformity determinations.

Working with and through the NYMTC Project Manager, the Consultant shall undertake some or all of the following regional emissions analysis and transportation conformity determination support and related activities needed to implement NYMTC's UPWP task work:

- A. Provide technical support services on NYBPM and related software packages for TIP/RTP regional emissions analysis modeling.
- B. Tabulate the Project Information Management System (PIMS) coding categories for transportation conformity model runs.
- C. Provide and support the maintenance of model networks for conformity analysis and improve the network coding procedures for both highway and transit; code highway, transit, signal and other projects into NYBPM networks.
- D. Run the NYBPM model for various milestone years.
- E. Tabulate NYBPM model run results to analyze system performance measures (i.e., VMT and VHT).
- F. Perform quality control checks on model results.
- G. Assist with development, testing and implementation of a new transportation-emission model and Post Processor software for conformity analysis, energy consumption and greenhouse gas analysis.
- H. Assist with running the post processing model (PPS-AQ)/MOVES for NYBPM scenario runs.
- I. Produce outputs for the Congestion Management Process (CMP).
- J. Assist with producing the emission tables and result summaries for various pollutants.
- K. Assist with streamlining the network coding procedures used to represent and analyze the collection of TIP/RTP projects.
- L. Assist with identifying potential interface improvements and required data input.
- M. Test the application and identify problems.

- N. Prepare/review technical memoranda; keep record of testing results and encountered problems.
- O. Assist with responding to data requests from the member agencies and other stakeholders.

Deliverables may include:

- 1. Updated highway and transit networks
- 2. Updated Scenario Manager files
- 3. Model run time logbook
- 4. Model run result summaries
- 5. PPS-AQ/MOVES result summaries
- 6. Tables and charts for transportation conformity determination and supporting documents
- 7. Advisory services related to the preparation and the performance of conformity analysis
- 8. Modified procedures and other deliverables based on NYBPM related software
- 9. Documentation on any modifications made to NYBPM or other conformity related software
- 10. On-site training and technical support

The Consultant shall assign key personnel to perform and deliver this Lot who should have experience with some or all of the following:

- A. Strong technical background in travel demand forecasting, statistical analysis, and data manipulation, specifically those related to the NYBPM and post-processing software (PPS-AQ/PPS-CMP).
- B. Experience with NYMTC's New York Best Practice Model (NYBPM) with the ability to modify NYBPM methods, scripts and core program source coding is highly desirable.
- C. Skill and experience programming with GISDK to modify NYBPM related software is desirable.
- D. Experience in regional emissions analysis for transportation conformity determinations, post-processing software, and USEPA's MOtor Vehicle Emission Simulator (MOVES) is desirable.
- E. Background in TransCAD and other transportation GIS packages.
- F. Strong written and verbal communication skills and excellent interpersonal skills.



### ***8.15 Attachment 15: Sample Task Assignment Request Template***

#### **RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC**

Below is the template that NYMTC shall use to make Task Assignment Request and details the response requirements of such.

#### **NEW YORK STATE DEPARTMENT OF TRANSPORTATION (NYSDOT) / NEW YORK METROPOLITAN TRANSPORTATION COUNCIL (NYMTC)**

#### **CONSULTANT PLANNING SERVICES FOR NYMTC (PSA5) TASK ASSIGNMENT**

**PSA5 REQUEST: “Lot Number Here”-\_\_\_**

**TITLE:\_\_\_\_\_**

**PIN#: PN\_\_.\_.\_\_\_\_**

**FEDERAL AID PROJECT ID NUMBER: \_\_\_\_\_**

#### **I. Task Assignment Purpose**

The New York Metropolitan Transportation Council is requesting consultant planning services to perform the Title Service under Lot # of the PSA5. This PSA5 task assignment request (TAR) process is only open to the Consultant selected under NYSDOT’s PSA5 RFP for Lot #. No other consultant firms can participate in the PSA5 request process.

#### **II. Specifications/Scope of Work for the Task Assignment**

##### **A. Specifications**

The proposing firm shall provide Qualification Descriptions for proposed key personnel to deliver all of the requested task assignment services. Substitute or new consultant staff can only be offered if prior approval from NYMTC’s Project Manager has been given.

Per RFP Attachment 12 ‘Key Personnel Experience’, the following key personnel are suggested:

1. Key Personnel 1
2. Key Personnel 2, etc.

## **B. Duties and Tasks:**

See RFP Attachment 14 'Compendium of Lots' sample scope #\_\_ '<TITLE>' for a general task assignment description. In addition, and more specifically, a response to this task assignment shall perform the following:

- a. Duty 1
- b. Duty 2, etc.
- c. Task 1
- d. Task 2, etc.

## **C. Schedule:**

The <Title> position shall be provided on a per-annum (12 month basis). This position is open to one candidate only. The person assigned to this task assignment shall work full time primarily at NYMTC's offices without any home base office support. It is anticipated that attending of the outside meetings may occasionally occur. Substitute or new consultant staff can only be offered if prior approval from NYMTC's Project Manager and from NYSDOT have been given.

## **D. Deliverables**

1. Monthly Progress Reports with a short description of work done by the contractor or consultant team.

## **III. Task Assignment Request Response Requirements**

### **A. Technical and Management Submittal**

1. Title page, indicating name, address and phone number of the PSA5 firm, including a contact person, and name, e-mail address and telephone number of the person(s) who prepared the task assignment request response. Include 180-day firm offer statement. Signed by a company officer.
2. Table of Contents
3. Executive Summary, which provides a brief description of the proposed approach and work effort.
4. Experience: Qualifications and prior relevant experience of proposed personnel is of great importance to NYMTC and NYSDOT. Direct, prior experience is highly desirable in the aforementioned field. For all named key personnel, provide a resume and at least two references. NYSDOT and NYMTC reserve the right to request information from any source so named, as well as seek experience validation checks on their own.
5. Organizational chart, with supporting narrative: Presents the services to be performed by each proposed Consultant personnel. If subcontractors are to be used, explain the need and how they will be incorporated into the effort and describe the arrangements. Discuss your plan for phasing project personnel into the task during the task's duration.

6. Scope of Services: Present a concise, detailed Scope of Services. Include descriptions of services to be delivered by each assigned key personnel. Discuss the extent and quality of interaction with key external stakeholders and participants. Include deliverables as applicable.
7. Task Assignment Schedule: Present your proposed schedule for completion of the task assignment showing the duration of subtasks and all major milestones and deliverables.

**B. Cost and Expenses Submittal:** Use cost schedule templates provided below

1. Task Assignment Budget: Present your proposed total budget with task-based, deliverable-oriented fixed milestone payment schedule. Present total cost of labor for each assigned key personnel by task. Present estimates of all required direct non-salary expenses to deliver all proposed task assignment response support services (for travel and per diem estimation purposes, assume 20% to 30% may be within the NYMTC planning area). Rates must come from and cannot exceed rates presented in **RFP #PSA5 Attachment 13 for Lot #\_\_\_\_\_**.
2. Salary Schedule. List all Consultant Job Categories and Levels with rates for all key personnel proposed to be assigned to this task assignment by year. Present one schedule by firm.
3. Direct Non-Salary Costs. Present estimates of direct non-salary expenses expected to be incurred in the performance of task assignment by task and by firm. Explain any assumptions supporting each out-of-pocket cost item with all factors leading to the derivations of the cost. Reasonable reimbursement for travel, meals, and lodging shall be limited to the prevailing maximum rates established by the State Comptroller. The latest state and nationwide rates are available at the following Web site:  
<http://www.gsa.gov>.

SAMPLE TASK ASSIGNMENT REQUEST RESPONSE

<SPECIFY LOT NUMBER HERE>

TASK ASSIGNMENT #<SPECIFY TASK ASSIGNMENT NUMBER HERE>;

PIN: <SPECIFY PIN HERE>

PROPOSED PROJECT BUDGET

FIRM NAME: \_\_\_\_\_

Job Category and Level	Home or Field	Contract Year of Hourly Rates	TASK HOURS	TASK HOURS	TASK HOURS	TASK HOURS	TOTAL HOURS	HOURLY RATES	COST
Direct Non-Salary Costs:									
TOTAL COSTS:									

## INSTRUCTIONS:

Submit one completed project budget form for each firm participating in the task assignment for each contract year included in the schedule of the Task Assignment Request.

Indicate all Job Categories and Levels, work location, contract year, rates, and hours for all assigned Consultant personnel by task and by firm. If more than one of the same Job Category and Level are being proposed, submit one line for each assigned same Job Category and Level.

Add or subtract Job Categories and Levels as required to reflect your proposed task assignment response plan. You can label each Job Category and Level according to personnel proposed in Attachment 13.

Add or subtract tasks as required to reflect your proposed task assignment response plan. You can label each task according to this plan.

Total all hours by Job Category and Level.

Multiply total hours by the assigned, applicable contract year rates to generate total labor cost by title.

Include estimates of Direct Non-Salary Costs (out of pocket expenses) required to deliver the requested services. Please separately itemize.

Round labor and expense costs to the nearest whole dollar.

SAMPLE TASK ASSIGNMENT REQUEST RESPONSE

<SPECIFY LOT NUMBER HERE>

TASK ASSIGNMENT #<SPECIFY TASK ASSIGNMENT NUMBER HERE>;

PIN: <SPECIFY PIN HERE>

PROPOSED PROJECT BUDGET

PROPOSED MILESTONE PAYMENT SCHEDULE

	PAYMENT ONE	PAYMENT TWO	PAYMENT THREE	TOTAL COST
Task One				
Subtask A				
Subtask B				
Task Two				
Subtask A				
Subtask B				
Task Three				
Subtask A				
Subtask B				
Task Four				
Subtask A				
Subtask B				

## INSTRUCTIONS:

Submit one completed milestone payment schedule form, which shall cover all proposed firm fixed total payments for all applicable costs (labor and expenses) for all firms participating in each task and subtask to deliver all support services per your proposed task assignment response plan.

Add or subtract task rows (and add or subtract subtask rows) as required to reflect your proposed task assignment response plan.

Add or subtract payment columns as required to reflect your proposed task assignment response plan. Max number should reflect the most numerous payment schedule per task (can leave non-applicable payment schedule columns blank).

**8.16 Attachment 16: Consultant Disclosure Employment Reports**

**RFP #PSA5: CONSULTANT PLANNING SERVICE AGREEMENT (PSA5) for NYMTC**

**OSC Use Only:**

Reporting Code:

Category Code:

Date Contract Approved:

**FORM A**

State Consultant Services – Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term			
State Agency Name: Transportation		Agency Code: DOT01	
Contractor Name:		Contract Number: C	
Contract Start Date: MONTH DD, 2022		Contract End Date: MONTH DD, 2027	
O*Net Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

Page of



**FORM B****OSC Use Only:**

Reporting Code:

Category Code:

**State Consultant Services**  
**Contractor's Annual Employment Report**  
**Report Period: April 1,            to March 31,**

Contracting State Agency Name: Transportation Agency Code: DOT01  
Contract Number: C  
Contract Term MONTH DD, 2022 to MONTH DD, 2027  
Contractor Name:  
Contractor Address:  
Description of Services Being Provided: RFP #PSA5: 'CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC'

**Scope of Contract (Choose one that best fits):**

Analysis ☐ Evaluation ☐ Research ☐ Training ☐  
Data Processing ☐ Computer Programming ☐ Other IT consulting ☐  
Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐  
Health Services ☐ Mental Health Services ☐  
Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☒

O*NET Employment Category Number and O*NET Job Title	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Preparer's Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Phone #: \_\_\_\_\_

Date Prepared:    /    /

Use additional pages if necessary)

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